TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 739.

CHAS. WOLFF PACKING COMPANY, PLAINTIFF IN ERROR,

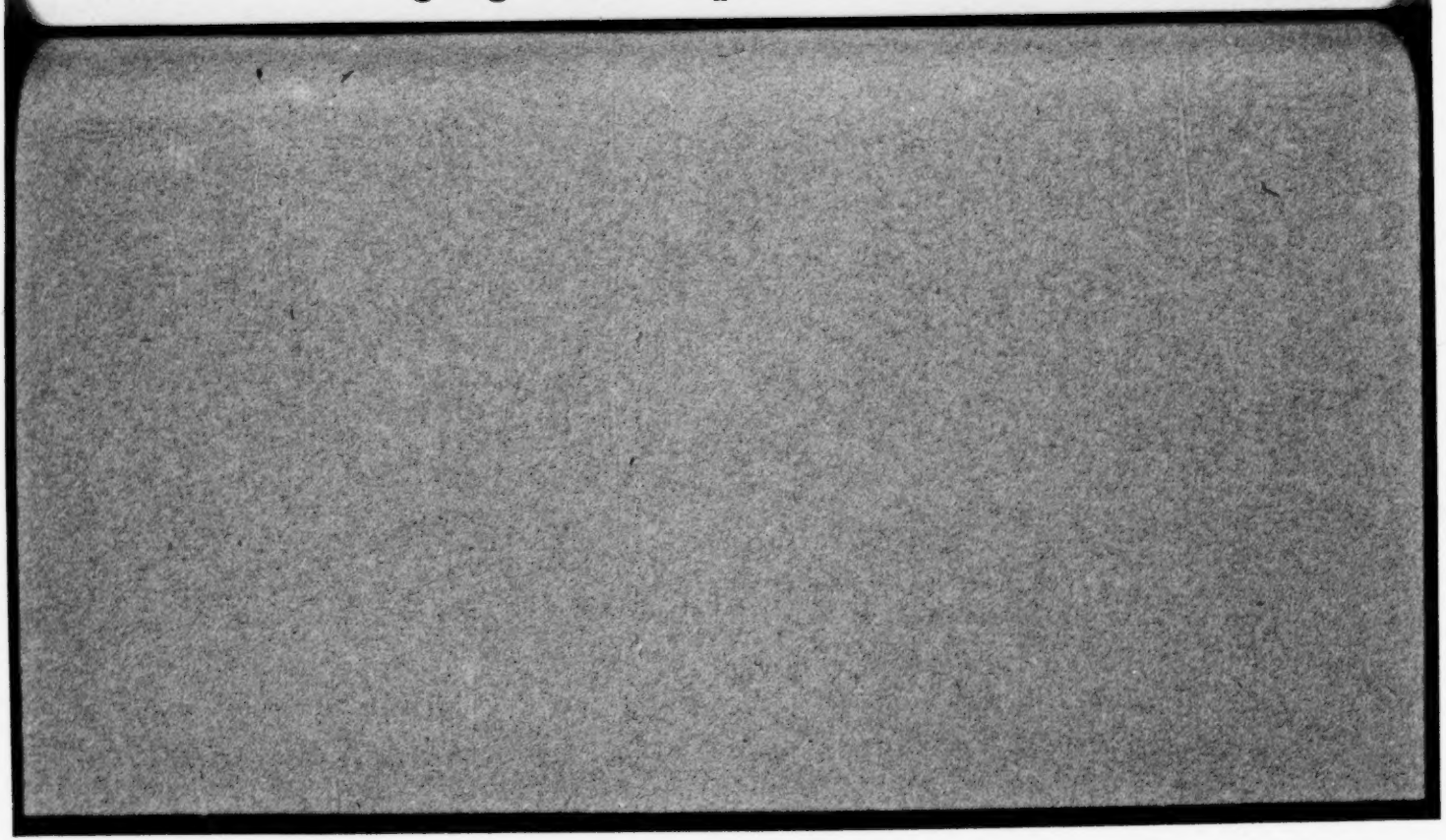
vs.

COURT OF INDUSTRIAL RELATIONS OF THE STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED DECEMBER 16, 1922.

(29,283)



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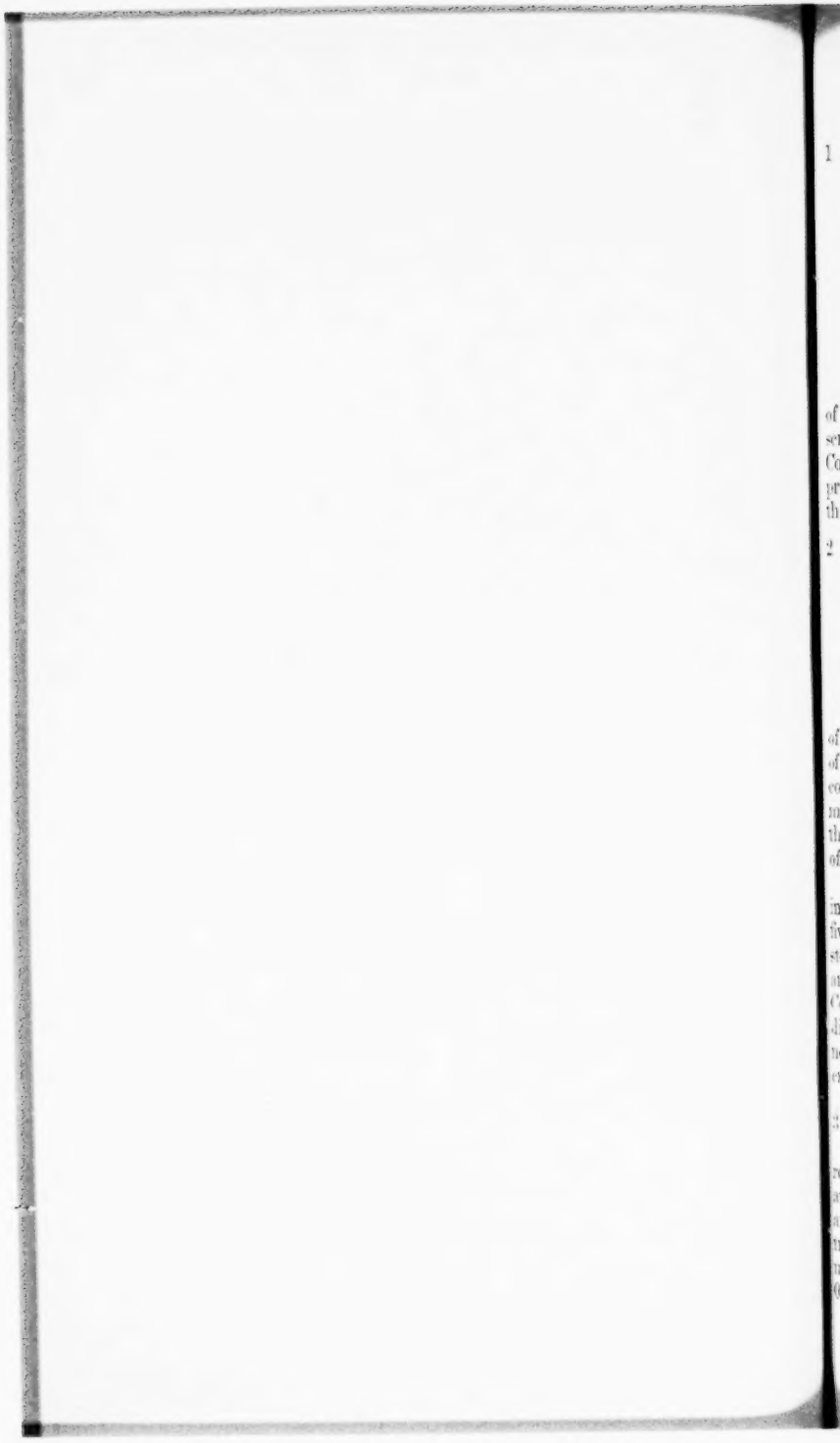

1 In the Supreme Court of Kansas.

No. 23702.

COURT OF INDUSTRIAL RELATIONS, Plaintiff,
vs.
THE CHAS. WOLFF PACKING COMPANY, Respondent.

STIPULATION.

It is stipulated by the parties hereto that the following portions of the record in the above entitled cause shall constitute the transcript of record on writ of error, and the Clerk of the Supreme Court of Kansas is requested to transmit to the Clerk of the Supreme Court of the United States only the papers designated in this stipulation.

2 [Title omitted.]

PETITION.

[Filed June 18, 1921.]

Your petitioner respectfully shows to the Court the following:

1. That your petitioner is a duly and legally constitutes tribunal of the state of Kansas, created and existing under and by virtue of Chapter 29 of the Laws of 1920 of said state, and has been so constituted and in existence at and during all the times hereinafter mentioned, with authority and jurisdiction over and concerning the matter and things hereinafter referred to under and by virtue of the provisions of said Chapter 29.

2. That the said respondent is a corporation organized and existing under the laws of the state of Kansas, and for more than twenty-five (25) years has been engaged in the business of preparing live stock to become food products for human beings; with its plant and principal place of business in the city of Topeka, Shawnee County, Kansas, and having a paid in capital stock of $600,000.00, divided into 6,000 shares of $100.00 each; that respondent's business is the only establishment of its kind in adjacent territory, and creates a large and growing market for live stock, to the great benefit of the community and to the great benefit of persons engaged in the business of live stock, and to the great benefit of persons generally engaged in agriculture; that the respondent's business extends over many states other than Kansas and to foreign countries; that the respondent daily receives from and prepares and ships to persons living in other states and countries large amounts of food products; that the total sales of its products during the year ending October 30th, 1921 exceeded $7,260,000.00; that during that year it slaughtered, prepared and sold for

human food nearly 10,000 head of cattle and more than 140,000 head of hogs, and paid out in wages to those engaged in the killing and preparation of said live stock products more than $400,000.00, and that the average number of employees so engaged is about 300.

3. That on January 19th, 1921, there was filed in said Court of Industrial Relations a complaint in writing made by W. E. May as president, Orville A. Chase as secretary and Hunter Blair as treasurer, and by the said persons as members and officers of Local Union 176 of the Amalgamated Meat Cutters and Butcher Workmen of North America, and as a committee to represent said union, and as a committee of persons employed in the packing house plant then and theretofore operated by respondent, in which the said persons made complaint as to rates of wages paid by the respondent to its said employees and as to certain practices and conditions alleges to be prevailing at the respondent's said plant—a copy of said complaint being hereto attached, marked Exhibit "A," and made a part of this petition.

5. That afterwards and on January 28th, 1921, the respondent voluntarily appeared and filed answer to said complaint in said Court, invoking the jurisdiction of said Court in its behalf and asking for a determination of the issues tendered by said complaint in said answer—a copy of said answer being hereto attached, marked Exhibit "B," and made a part of this petition.

6. That on March 3rd, 1921, pursuant to an order made
4 by said Court, the said complainants and the said respondent duly appeared before said Court, and a hearing was begun and evidence introduced upon the issues made by said complainant in said answer; that the hearing and the taking of evidence in said proceedings in said Court continued during March 3, 4, 7, 8, 9, 10 and concluded upon the 11th; and that on or about March 21st, 1921, said Court made and entered an order pending the further and final determination of said controversy; and that at the time of the issuance of said order there was impending throughout the United States a general strike of employees engaged in respondent's kind and character of business, and which general strike would have included respondent's employees; that the government of the United States took cognizance of the controversy between the employers and employees engaged in the packing industry and of such threatened and impending general strike, and at the direction of the President of the United States the Secretaries of Labor and Commerce secured a temporary adjustment of such controversy until September 1st, 1921 upon a basis practically identical with the temporary order issued by said Court on March 21st, 1921—a copy of said order being hereto attached, marked Exhibit "C," and made a part of this petition.

7. That after the making of said temporary order, Exhibit "C," and while said controversy was pending in said Court, the same was set down for argument before said Court; and that on the 29th day of April, 1921 the said respondent, by D. H. Hite its attorney of record, appeared before said Court, and thereupon the matters

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involved in said controversy were fully argued before said Court and submitted and taken by said Court under consideration.

8. That on May 2nd, 1921, as a final determination of said controversy before said Court, an opinion and findings of said Court was made and filed, and an order of said court made and issued directing the said respondent to do and perform the things in said order provided, particularly with reference to the payment to its employees of certain minimum wages as in said order specified and to observe certain working hours and conditions as in said order provided; that said order was duly served upon the respondent in the manner provided by law—a copy of said opinion and findings being hereto attached, marked Exhibit "D," and made a part of this petition, and a copy of said order being hereto attached, marked Exhibit "E," and made a part of this petition.

9. That the said respondent failed, neglected and refused to comply with or obey the said order made by said Court on March 21st, 1921; that likewise said respondent has failed, neglected and refused to comply with or obey the order of said Court made May 2nd, 1921; and that the said respondent's failure, neglect and refusal to comply with, obey and abide by said orders of said Court continues to this day.

10. That the respondent voluntarily appeared before said Court in said controversy; filed its answer, setting forth not only its contention but its admission that its business was impressed with the public interest as defined by said Chapter 29, and prayed that said Court of Industrial Relations further determine "that any interruption of your respondent's business will result in hardships and loss to the farmers and livestock producers of the State of Kansas," and that the demands of respondent's employees would "interrupt the conduct of your respondent's business to the manifest impairment of your respondent's ability to furnish articles of food for human consumption, and to furnish an open, free market for livestock;" furthermore, that the respondent's participation in the proceedings and hearings before said Court were voluntarily and without objection to the jurisdiction of said Court or the manner or conduct of such proceedings.

11. That among the provisions of said Chapter 29 it is provided in Section 8, among other things, as follows:

"Such terms, conditions, rules, practices, wages, or standard of wages, so fixed and determined by said court and stated in said order, shall continue for such reasonable time as may be fixed by said court, or until changed by agreement of the parties with the approval of the court. If either party to such controversy shall in good faith comply with any order of said Court of Industrial Relations for a period of sixty days or more, and shall find said order unjust, unreasonable or impracticable, said party may apply to said Court of Industrial Relations for a modification thereof and said Court of Industrial Relations shall hear and determine said application and make findings and orders in like manner and with

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like effect as originally. In such case the evidence taken and submitted in the original hearing may be considered."

That notwithstanding such provision, the said respondent persists in the violation of said Court's order, and refuses to make any attempt to comply therewith and ascertain the reasonableness and practicability thereof.

12. That the order made by said Court of March 21st, 1921, was a temporary order, was fair and reasonable, and for the best interests and welfare of the parties concerned and the public pending the hearing.

13. That the opinion and findings, and accompanying order made May 2nd, 1921, was the final determination of the controversy upon the evidence submitted; that the same was fair and reasonable, and that the minimum wage scale therein provided is in accordance with the minimum wages paid under similar classifications in other industries of like character to respondent; that the provisions as to hours of service and working conditions are just and reasonable, and in no wise a burden upon the respondent; and that the failure and refusal of the said respondent to obey the said orders of said Court, particularly the order of May 2nd, 1921, is a violation of the provisions of said Chapter 29.

By reason of the foregoing premises, your petitioner respectfully prays that this Court make an order by way of a peremptory writ of mandamus, that the said respondent, The Charles Wolff Packing Company, forthwith and without delay comply with the orders of said Court of Industrial Relations herein above set forth, and particularly the order of May 2nd, 1921, attached by copy of Exhibit "E" to this petition; and for such orders and general relief as this Court may feel warranted in the premises. Baxter D. McClain, Attorney.

(Verified by W. L. Huggins, Presiding Judge of the Court of Industrial Relations.)

7 (Caption omitted.)

COMPLAINT.

Come now W. E. May, President, Orville A. Chase, Secretary, Hunter Blair, Treasurer, members and officers of said Local Union No. 176 of the Amalgamated Meat-cutters & Butchers' Workmen of North America, employees of the respondent, The Charles Wolff Packing Company, a corporation engaged in carrying on the business of slaughtering live stock and packing meat as hereinafter appears, and for the cause of complaint allege and say:

That said W. E. May is the duly chosen, qualified and acting president, and that Orville A. Chase is the duly chosen, qualified and acting secretary, and Hunter Blair is the duly chosen, qualified and acting treasurer of said Local Union No. 176; that said union is one of several local unions constituted Amalgamated Meat-cutters & Butchers' Workmen of North America of the said national

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organization, and that said national organization is a labor union and voluntary association of employees engaged in the work and employment of slaughtering live stock, packing the meats manufactured or made therefrom, and including the by-products of said manufacturing industry in the several states of the United States of America, including the state of Kansas; that said Local Union No. 176 is composed of workmen employees engaged in work in the packing house of the respondent within the city of Topeka, Shawnee County, Kansas, and has about 299 employes, all engaged in the work aforesaid for the respondent company; that in addition to being the authorized officers empowered to control and manage the affairs of said Local Union 176, to represent its membership, and appear and prosecute this proceedings on and in its behalf, the said officers have been duly appointed and constituted a committee
8 to represent said Local Union 176, and to commence and prosecute this proceeding on and in behalf of said local union; that the respondent, The Charles Wolff Packing Company, a corporation duly organized and transacting the business of conducting a packing plant in the city of Topeka, Shawnee County, Kansas, and as such packing plant is engaged in the purchase and slaughter of live stock, and the manufacture of meats for sale for human food within the said state, and in the packing of such foods for preservation of the same, and in the manufacture of various by-products of said business from said live stock; that the respondent is therefore engaged in the manufacture and preparation of food products, and is thereby engaged in converting said substances from their natural state to a condition to be used as food for human beings; and as such, respondent and manufacturer is subject to the jurisdiction, control and regulation of the Court of Industrial Relations, and subject to all of the provisions and requirements of Chapter 29 of the Laws of 1920, generally known as the Court of Industrial Relations Act; that a controversy has arisen between said respondent and the said employees engaged in the operation of said packing business, and that said respondent is now unlawfully failing, neglecting, and refusing, and has during the last thirty days unlawfully failed, neglected, and refused to pay said workers and members of said Local Union 176 and its 299 members, a fair, living, and reasonable wage, to which said workers and employees are entitled; that said controversy has endangered and is continuing to endanger the continuous operation and efficiency of service of said packing plant, and does affect and will affect the manufacture and production of the commodities necessary for human food within the State of
9 Kansas and within the vicinity where said packing plant is now operating, and will and does endanger the orderly operation of said packing plant; that the membership and officers of said Local Union No. 176 have through their officers used every diligent effort to settle said controversy, and to reach an agreement with their said employer as to said just and reasonable wage, but that said respondent has failed, neglected, and refused, and still fails, neglects, and refuses to make settlement of said controversy with the officers and members of said Local Union No. 176, and to come to any fair

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agreement with them or any of them in the premises; that the failure, neglect, and refusal of the respondent to settle the matters and things involved in the said controversy will lead to other and further disputes between said parties, and will endanger the continuity, efficiency, and service of said packing plant, and the operations of the respondent in control of the same, and will produce individual strife and disorder, and endanger the orderly operation of said packing plant under the control of the respondent, and will thereby endanger the public peace, public health, and general welfare of the state; that prior to January 1, 1921, the said Local Union No. 176 and its members were employed under the terms of and by virtue of a written contract entered into in the nature of collective bargaining May 10, 1920, with their said employer. A copy of said contract is hereto attached, marked Exhibit "A," and made a part of this complaint; that on January 14, 1921, the respondent gave notice to the complainants thru their said officers that said contract would not be renewed for another year, and have since said time neglected and refused to enter into any contract for the government or
10 control of future employment of the members of said union; that the respondent has unlawfully refused and neglected to make settlement with the members of said Local Union No. 176, their said employes, as to the compensation described in paragraph 10 of said contract, and that said controversy remains unsettled between the parties to this proceeding; that on said January 14, 1921, the respondent gave notice to the complainants herein of a cut of wages ranging from 7½¢ to 15¢ per hour as to the various employes, members of said local union, and that the respondent has refused since said time to allow any of the members of said local union to continue work except under the terms and conditions of the notice of such reduced compensation.

The complainants further allege that the wages so fixed, or attempted to be fixed, by the respondent, will be unfair to the employes, and will be and do constitute less than a fair and living reasonable wage for said employes. A schedule showing the employment of each of said employes, and the wages received by her or him, will be filed in this proceeding, but the same is too long to be filed as a part of this complaint; that under the terms of the employment of the members of said local union, as expressed in the said contract, the basic day's work was eight hours, with guaranteed time of forty hours per week at the regular rate set out in the schedules which were a part of said contract, and also overtime at the rate of time and one-half after eight hours; that under the notice of reduction of wages given by respondent herein referred to, all allowances for overtime and all guarantees of stated time per week have sought to be abrogated by the respondent, and thereby the basic day of eight hours' work per day has been also changed and abrogated
11 but that there is now no stated time constituting the basic day of work under the present practices of the respondent; that certain other employes, by reason of their skill and faithfulness in work, had received modifications of their wages stated in the said contract, and were at the time of its expiration receiving additional

wages for their work; that all of said advances have been cancelled by the said notice in the reduction of wages given by the respondent as aforesaid.

12 Wherefore the complainants pray that this Court take jurisdiction of said controversy; that they enter upon a full investigation of the dispute and controversy existing between said respondent and these complainants; and after said hearing, that the Court enter an order fixing a fair, reasonable, and living wage for the complainants authorizing and compelling the respondents to enter into a contract for the continuance of service of its said employes at such fair and reasonable rates, and that as a condition of the future operations of said packing plant, and one of the terms of the settlement of said controversy, respondent be compelled to make adjustment of any sums due the complainants for compensation under section 10 of the said contract, and for such other and further relief in the premises as the complainants may be found entitled to under the law of the state of Kansas. W. E. May, President. Orville A. Chase, Secretary. Hunter Blair, Treasurer.

(Verified by W. E. May, Orville A. Chase and Hunter Blair.)

13 **EXHIBIT "A" OF EXHIBIT "a."**

Topeka, Kansas, May 10th, 1920.

The following wage agreement shall be effective as of May third (3rd), 1920, and remain in effect thereafter until January first (1st), 1921, subject to change only by Judge Alschuler, ruling on the Big Five Packers at Kansas City, Kansas.

(1) The principles of open shop shall apply.

(2) Employees shall receive wages per hour as shown in schedule one (1) hereto attached.

(3) Basic day shall be nine (9) hours until June first (1st), 1920, after which date the basic day shall be eight (8) hours.

(4) Guaranteed time shall be forty (40) hours per week at the rates set out in said schedule one (1), but this guarantee shall not include Sundays, Xmas, New Years, Memorial Day, Independence Day, Labor Day, nor Thanksgiving Day. Neither shall this guarantee cover loss of time over which the Company has no control.

(5) Over-time at the rate of time and one-half for over-time after nine (9) hours, until June first (1st), 1920, and eight (8) hours after June first (1st), 1920 and for the holidays named in paragraph four (4) hereof.

(6) Starting time shall be set by the Company and may be changed when considered advisable.

(7) Only such notices as have been approved by the Company may be posted and those only on bulletin boards provided for such purposes.

(8) Piece work rates shall be according to schedule two (2) attached hereto.

(9) The seniority shall prevail in all cases except where an employee is incompetent.

(10) In addition to the rates set out in schedule- one (1) and two (2) hereof, a bonus of five (5 cts.) cents per hour shall be paid to all employees, except where any employees, either man or woman, voluntarily leaves the employment of the Company, during which period he or she would receive no bonus. Should the Company discharge any employee for a just cause, such employee shall forfeit the bonus for that period. Should the Company be compelled to cut down the size of any of its gangs on account of slackness of work the Company will pay the bonus earned, up to the time the men are layed off. Men employed during the period up to the first of the month preceding the end of the bonus period shall participate in this bonus. Bonuses shall be paid on April first (1st) August first (1st) and December first (1st) respectively.

14 (11) All grievances must be taken up through the Grievance Committee of the employees. The Company shall have ten (10) days in which to adjust differences. The Chas. Wolff Packing Company, by Chas. Wolff, President. C. W. Sheehan, Sup't.

The above shall be obligatory when accepted in writing.

Accepted. H. Blair, J. C. Goodell, H. Lacenberry, W. E. Briggs, Wage Committee.

(Attached to the foregoing agreement was a schedule consisting of 12 pages, showing different stations, employments, or jobs, in Respondent's plant, with the various numbers of workers employed at each job or station, (the number of such workers amounting in the aggregate to approximately 300), and stating the hourly wage rate for each station, employment or job.) (See Exhibit B, Appendix.)

15 **EXHIBIT "B."**

[Caption omitted.]

ANSWER.

The answer to The Charles Wolff Packing Company, the above respondent, respectfully shows:

(1) Except as specifically admitted herein, the respondent denies the statements contained in the complaint herein and saves unto itself all proper exceptions to the insufficiency of said complaint.

(2) Your respondent admits that it is a corporation and engaged in business substantially as alleged in the complaint herein, and that heretofore it entered into a wage agreement substantially as set out in the exhibit to the complaint herein and by the terms of such agreement it expired and ceased to have any binding force or effect either upon your respondent or upon the complainants on December 31, 1920.

(3) Your respondent avers that in every particular it scrupulously performed all of the obligations imposed upon it by terms of said wage agreement, and if any controversy exists with reference to the

manner in which your respondent performed such obligations it grows out of and is founded solely upon the erroneous interpretation of such wage agreement adopted by the complainants herein, and is not due to any disregard, or effort of your respondent to disregard, any such obligations.

(4) Your respondent respectfully states that it is sometimes claimed by the complainants that by virtue of said wage agreement taken in connection with a certain decision and ruling made by Judge Alschuler, to whom reference is made in said wage agreement, the complainants are entitled to larger compensation
16 than is specifically stated in and provided by said wage agreement, whereas in fact the said wage agreement contains a clause granting to the complainants a bonus in excess of the amount which would be due to them under such ruling and in truth and in fact a fair interpretation of said ruling, together with said wage agreement, would require the complainants to refund to your respondent a large sum paid to them by way of bonus prior to the publication of said ruling so made by said Judge Alschuler.

(5) Your respondent further states that it is sometimes pretended by the complainants that there is a controversy between them and the respondent because of said complainants claim that they are entitled to a bonus for the month of December 1920, notwithstanding said wage agreement specifically terminated the time during which such bonus shall be computed on December 1, 1920.

(6) Your respondent further states that it is sometimes pretended by the complainants that a controversy exists between them and your respondent relative to the wages to be paid by your respondent to the complainants subsequent to January 1, 1921, the time at which said wage agreement, Exhibit A, expired, but your respondent says that the only controversy between the complainants and your respondent relative to such wages consists of a demand made upon your respondent by the complainants or in their behalf that your respondent execute a certain form of wage agreement, submitted in writing by the complainants, on or about January — 1921, accompanied by a demand of the complainants that your respondent on or before January 22, 1921, pay to said complainants all they demanded under their alleged interpretation of said wage agreement, Exhibit A, and without deviation or discussion sign the new wage agreement accompanying said demand; that upon the presentation of such demand your respondent invited the complainants to a conference with respondent's duly authorized representative
17 for the purpose of interchanging views as to complainants' demands, and for the purpose of explaining to the complainants the reasons your respondent could not accede to such demands, but said complainants declined any conference whatever and insisted that their said demands should be treated as final; that at the time the complaint herein was filed the time for your respondents further consideration of said demand had not expired.

(7) Your respondent further states that as to the demands of the complainants involving interpretation of said wage agreement that

there is no ground upon which your respondent can justify payment of the money demands made by the complainants, as such demands are completely answered by the wage agreement, Exhibit A, under which the complainants claim to be entitled to make such demands; that if properly and lawfully interpreted said wage agreement requires the payment by your respondent of any sum whatever over and above what your respondent already has paid the complainants, your respondent is ready, able and willing to respond to the complainants for any such sums which it has so failed to pay and is ready, able and willing to respond to the complainants for its failure in any other respect fully to perform all of the obligations of said wage agreement undertaken by your respondent.

(8) Your respondent further shows that during the year 1926, notwithstanding its best efforts, its business was operated at a loss in excess of $100,000; that notwithstanding such loss, feeling bound by the terms of its voluntary wage agreement made with the complainants, your respondent suffered said loss and strictly, literally and fully complied with its obligations under said agreement; that a continuance of such wage agreement or of any other wage agreement obligating your respondent to pay to the complainants, or to any other employees of a similar kind, wages as provided in said wage agreement, Exhibit A, would necessarily result in confiscating your respondent's property as it cannot under present conditions earn sufficient to enable it to pay wages to the complainants upon any such scale of compensation, or under any such conditions, as said complainants proposed in their said demands to your respondent they would insist upon being paid.

(9) Your respondent further states that wages now being paid to employees approximately are equal to or greater than the wages paid by your respondent a year ago, notwithstanding the cost of living has been reduced to a lower basis than existed a year ago.

(10) Your respondent further states that the said demand of the complainants that this respondent enter into a wage agreement terms of which were fixed by the complainants, without reference to the ability of your respondent to carry out such terms, is unjust, unreasonable, and that the business of your respondent, conducted as economically as it is possible to conduct it, will not stand, under present conditions, the payment of such wages as demanded by the complainants, and this your respondent is ready, able and willing to show and for that purpose invites the inspection and examination of its books, accounts, papers, documents and business as may be required by any order of this court made in this cause, saving to the respondent proper access to its said books, papers, documents, accounts and business for the purpose of properly conducting the same without interruption, provided the information obtained by the court, or any of its officers, agents or employees from your respondent's books and accounts shall be deemed and held to be confidential for the use of the Court in making up its decision and shall not be given publicity to the prejudice of your respondent's business and affairs.

(11) Your respondent most respectfully shows that it cannot without prejudice to its lawful rights consent that this court shall enter any judgment against your respondent in respect of or growing out of any money demands of the complainants based upon
19 any contract between your respondent and the complainants which has terminated by lapse of time, and most respectfully asks that the complainants in respect of such demands be relegated to their actions at law, if any they have, where any controversy between the complainants or any of them and your respondent concerning such money demands may be determined by the judgment of a court of general jurisdiction to the end that such controversy may be finally disposed of in the manner and by the means provided by law.

Wherefore, having fully answered said complaints your respondent most respectfully prays that upon hearing it be determined by this court that its dealings with its employees have been just, fair and reasonable; and, that no grounds exist for the said complainants, by means of a strike or failure, in any respect, to perform their duties as employees, to interrupt the conduct of your respondent's business to the manifest impairment of your respondent's ability to furnish articles of food for human consumption, and to furnish an open, free market for livestock; and, that it be further determined that any interruption of your respondent's business will result in hardships and loss to the farmers and livestock producers of the State of Kansas. The Chas. Wolff Packing Company, by D. R. Hite, Counsel.

20 **EXHIBIT C.**

(Omitting caption.)

TEMPORARY FINDINGS AND ORDER.

Now on this 21st day of March, 1921, this matter comes on for consideration upon the one question of the length of the working day and the wage to be paid for overtime. Upon the evidence before it the Court finds that this is a case in which temporary findings and a temporary order may properly be issued under the provisions of Section 7 of the Industrial Law. The Court finds from the evidence that the work performed by a large number of employees of the respondent herein is of a nature which is exhausting to the physical strength of the workers and, although the plant and the surroundings are kept in the best possible order and condition, yet in the very nature of the work the employees are subjected to conditions which, if long continued, would be detrimental to health. In some instances workers are working in rooms more or less filled with steam; in others, large quantities of water is used; in some places the heat is oppressive; and in other places, the work is in refrigerated rooms where the temperature is low. The handling of the products of the slaughtered animals is done under such conditions as that long hours of work would be detrimental to the health of the employees. These

adverse conditions apply especially to all employees who handle the product of the respondent from the time the animals are driven into the shackling pen until the time that the product is placed in storage ready to be shipped out when orders are received from customers.

The Court further finds that, under government regula-
21 tions and under the necessities of the case as well, a very large number of such employees are required to change their street clothing for other clothing suitable to be worn at their work after their arrival at the plant in the beginning of the day; and that before leaving the plant it is necessary that they repair to the wash and bath rooms, take off their working clothes and re-habilitate themselves in their usual street clothing. These two processes, under the evidence, require from thirty to forty-five minutes each day and is done wholly upon the employees' time and not upon the respondent's time.

The Court further finds from the evidence that the managing officers of the respondent claim that where an eight-hour day is provided and time and one-half is paid for overtime, the employees "slack" upon the job during the seventh and eighth hour- in order to work into the ninth hour and get extra pay at time and one-half; that the employees, on the other hand, bitterly deny this statement and resent it; but that the conditions described cause constant friction between the employer and employees and have a tendency to cause industrial strife, disorder and waste, and interfere with the successful and efficient operation of the industry.

The Court further finds that because of the great volume of evidence which was introduced in this case and the length of time that is necessary to transcribe said evidence, and the further delay which will be necessarily caused by referring all the evidence with regard to statistics to the Court's accountant for analysis, that it is impossible to reach a final determination of this case upon the merits until a lapse of possibly thirty days from this date; and therefore that a temporary order should be made herein.

22 It is therefore by the court ordered: That pending the final determination of this controversy, the employees of respondent, who handle the product from the time the animals are driven into the shackling pens until the time that the product is placed in storage ready to be shipped out upon orders from customers, be placed upon the eight-hour day, but that time and one-fourth shall be paid for the ninth hour, and time and one-half thereafter.

This order is temporary only, and shall continue only until such time as a final order may be issued in this case.

By the Court it is so ordered. (Sgd.) W. L. Huggins, (Sgd.) J. A. McDermott, Judges.

Attest: (Sgd.) Carl W. Moore, Clerk.

23

EXHIBIT "D."

(Caption omitted.)

OPINION.

May 2, 1921.

By HUGGINS, *Presiding Judge:* The complaint in this case was filed on January 19, 1921. The issues were joined by the filing of an answer by the respondent on the 28th day of January, 1921. This case has been delayed far beyond what is usual in this court because of changes made in the industrial law by the legislature, which was in session at the time the complaint was filed and remained in session until about the middle of March. The legislature made such changes as took away from the Industrial Court the work of the Public Utilities Commission; and because of that change there was a change in the personnel of the court and in the personnel of the working force, all of which has caused some delay herein.

The complainants are the president, secretary and treasurer of local union No. 176 of the Amalgamated Meat Cutters' and Butchers' Workmen of North America, a labor union. The respondent is a meat-packing company, whose plant is located in the city of Topeka, Kan. The respondent's business consists in the slaughtering of various kinds of live stock and converting the said live stock into meats of various kinds and qualities, lards, oils and other products, all or nearly all of which are used as food for human beings. The complainants state that a controversy has arisen between the respondent and its employees which, at the time of the filing of the complaint, was endangering the continuous operation and efficiency of the plant, and thus affecting the public by hindering delaying or possibly entirely suspending the operation of the plant in the manufacture of such commodities necessary for human food within the state of Kansas and within the vicinity. It is further stated in the complaint that the respondent has failed, neglected and refused, and still fails, neglects and refuses, to settle the matters and things involved in said controversy; and that if said controversy be not

24 settled it will lead to other and further disputes and will produce industrial strife and disorder and endanger the public peace, the public health and the general welfare.

Specifically, the complaint states that prior to January 1, 1921, said local union No. 176 and its members were employed by the respondent under the terms and by virtue of a written contract in the nature of a collective bargain; that said contract by its terms would expire on January 1, 1921, unless renewed by the parties. That on January 14, 1921, the respondent gave notice to the complainants, through their said officers and by posted notices, that said contract would not be renewed for another year, and that respondent has refused to enter into any contract for the government or control of future employment of the members of said union. That the respondent, on the 14th day of January, 1921, gave notice to the

members of said union and to other employees that the wages had been cut; that said cut in wages would range in the different employments all the way from seven and one-half cents per hour to fifteen cents per hour. That under the terms of said collective contract a basic day of eight hours was recognized, and there was a guarantee of at least forty hours per week employment at the regular rate set out in the schedules, which were a part of said contract, and also that overtime from and after the eight hours' work in any one day should be paid to the employees at the rate of time and one-half. That all of said provisions had been abrogated by the respondent; and that at the time of the filing of the complaint there was no basic day established and no stated time constituting a day's work; that there was no guarantee as to the number of hours' work during the week, and that in certain of the skilled employments other modifications had been made which reduced the wage. That under paragraph 10 of the contract a bonus of five cents per hour in addition to the rates set out in the schedule was paid to all permanent employees three times a year, and that under the wage scale instituted by the respondent at the expiration of said contract the bonus had been entirely taken away. The complainants pray that the court take jurisdiction of the controversy and enter upon a full investigation of the dispute, and that after said hearing the court make an order fixing a fair and reasonable wage for the complainants, and authorizing and compelling the respondent to enter into a contract for the continuance of service of its employees at such fair and reasonable rates, and for such other relief in the premises as might be found right and proper under the industrial law of this state. The complaint is verified by the three officers of the union above named.

The answer of the respondent contains: (1) A general denial; (2) an admission of the incorporation of the respondent and the nature of its business substantially as alleged in the complaint; that the wage contract set out in the complaint was, as a matter of fact, entered into as alleged and that its terms were as alleged, but that it expired and ceased to have any binding force or effect upon either of the parties on December 31, 1920; (3) an allegation that the respondent had scrupulously performed all the obligations imposed upon it by the terms of said contract; (4) denying any liability under the bonus clause contained in section 10 of the former contract; (5) a statement that the respondent was not given a fair opportunity to discuss with its workers the provisions of any new contract, but that the workers presented a typewritten contract and demanded signature without discussion; (6) a statement that if there be anything due to the complainants by virtue of the former contract which expired on December 31, 1920, the respondent is able, ready and willing to pay the same upon the order of any court of competent jurisdiction; (7) an allegation that the business of the respondent was operated during the year 1920 at a loss in excess of $100,000, and that a continuance of the wages provided for in said wage agreement would necessarily result in confiscation of respondent's property; (8) an offer on the part of the respondent to open up its books,

accounts, papers, documents and business to the inspection of the court or its expert accountants, saving only to itself proper access to the same for business purposes during the progress of said inspec-
26 tion; (9) a denial of the jurisdiction of the industrial court to enter any money judgment for past-due wages under the terms of said contract, if any should be found.

The respondent then prays that a finding and order be entered by the court, setting forth that respondent's dealings with its employees have been just, fair and reasonable and that no grounds exist for said complaint, and that the court do nothing which may impair respondent's ability to furnish articles of food for human consumption, and to furnish an open, free market for live stock, and that the respondent's business be shielded and guarded against any interruption.

At the beginning of the trial of this case the complainants asked and obtained leave of court to file an amendment to their complaint. In this amendment they complained that women workers are paid a much lower wage than men for the same class of work, and ask the court to make an order fixing the wage of women and men doing the same class of work at the same rate. After taking the matter under consideration, and at the beginning of the second day of the trial, the respondent in open court consented that any order made herein should contain a provision that women and men at the same class of work should receive the same pay.

Both parties to the controversy also in open court stated that the business of the respondent had always been operated upon what is known as an "open-shop" basis, and that no change in that regard was desired by either party.

The complaint herein is filed, as before stated, by the officers of the organized workers, but will be treated by the court as a complaint upon behalf of all employees now engaged or hereafter to be engaged in the operation of the respondent's plant in Topeka.

At the trial of this case complainants were represented by the three officers of the local union; by a Mr. Joyce, the general auditor of the international union; and by Mr. Jimerson, president of the union in this district, composed of Kansas and five or six other states. They were also represented by the attorney-general of the State of Kansas and by an attorney appointed by the Court
27 of Industrial Relations. The respondent appeared by its president and manager and its counsel. A great volume of testimony was taken, and the trial of the case occupied the attention of the court for seven consecutive days.

It will not be necessary in this opinion to recite the evidence in any detail. The evidence shows that the present plant of the Charless Wolff Packing Company, is the consummation of the life work of Charles Wolff, senior, who began in Topeka nearly fifty years ago as an ordinary butcher, buying his own live stock, butchering it himself by the aid of a few helpers, and supplying meat to the local trade. The business expanded from year to year until finally it became too large for a single individual to handle successfully, and was incorporated. Charles Wolff, senior, died a few years

ago, and was succeeded by his son, Charles Wolff, junior, the present managing officer of the plant. After the death of Charles Wolff, senior, the stock of the corporation was sold to what is known as the Allied Packers, a corporation owning and operating packing plants in several of the states and in the Dominion of Canada. The evidence shows that the Wolff management has not materially changed, and that Charles Wolff, junior, is in charge of the business at this time and is conducting it in very much the same way as it has been conducted for many years past. During the life of Charles Wolff, senior, the employees were not organized, but they were organized under their present union organization about two years prior to the filing of the complaint herein. The evidence further shows that there has never been any serious controversy between the management and the employees until the present time.

A large amount of testimony was taken with reference to the present cost of living as compared with the same cost one year ago. There is a conflict in this testimony. The complainants contend that the downward trend in the cost of the necessaries of life has not materially affected the retail trade as yet. On the contrary, the evidence of the respondent tends to show that there has been a reduction in the cost of the necessaries and comforts of life amounting to 25 per cent or more within the past twelve months.

28 It is admitted that the contract of employment as set out in the complaint was entered into as alleged therein, and that wages were paid in accordance therewith and working conditions were governed thereby from the 1st of January, 1920, until the 17th of January, 1921. On the latter date a reduction in wages was made by the respondent. The evidence shows that the wage cut amounts, on the average hourly wage, to a reduction of 10¼ per cent upon the wages provided for under the contract. This reduction, however, is not uniform. In some of the positions in the plant the wage is slightly increased by the new schedule, while in others it is reduced considerably more than 10¼ per cent.

One of the principal contentions in the evidence is the question of the eight-hour basic day. Upon this point the evidence shows that many workers, especially those engaged in what is called the killing, cutting and trimming departments, are in the very nature of the business compelled to work under conditions which are disagreeable and are not conducive to the health of the workers. Some of these workers are standing over scalding vats in rooms that are more or less filled with steam from the hot water; others are working under conditions which require them to wear rubber boots and rubber clothing to protect themselves from blood, water and steam; others are handling the entrails and the different parts of the carcasses of the slaughtered animals and using water in the cleansing process. While the evidence shows to the entire satisfaction of the court that the work in this plant is done under the best possible conditions of cleanliness, nevertheless there is about the work that which not only requires strenuous physical exertion, but is also disagreeable and more or less unhealthful in other respects.

This packing plant is what is known among packers as a small plant, employing between 300 and 400 people. The help is shifted from one position to another as the necessities of the case may require, so that it is very difficult to classify and to separate the workers who are required to work under conditions such as have been described from those who have more favorable positions. In this plant, because of the limited number of men employed, the men are shifted from one job to another when occasion requires it. For instance, a man may be employed in the cattle-killing gang for a part of his time, and then may be transferred to some other department when his services are no longer needed in the cattle-killing department. The rate of pay may be different in the two employments. This makes the wage scale a complicated matter.

The evidence shows also that the workers in these departments are compelled when they arrive at the plant in the morning to take off their ordinary clothing and to put on clothing which will protect them from the dampness and from direct contact with the carcasses of the slaughtered animals and which will meet the requirements of the Federal regulations in such matters; and before they leave at night they must, of course, change back, wash themselves, and prepare to return to their homes. Now this process, which occupies the time of the employees from thirty minutes to an hour per day, is done on the employees' own time; the hourly wage does not begin until the employee gets to his place of duty, and it ends when he leaves that place of duty after the day's work is done. To do an eight-hour day's work, therefore, workers engaged in this occupation are required to be inside the plant at least eight and one-half hours and possibly nine hours per day.

In view of all these matters, it is the opinion of the court that this is an employment in which eight hours as a general rule, should constitute a day's work.

On the other hand, the respondent's evidence shows that it is unable to control the supply of live stock. Farmers and stock raisers will ship in the live stock when it is ready to ship; and so in spite of all the management can do to keep up a steady supply, there will be times when the yards fill up and it becomes necessary in order to avoid great loss to the company to run more than eight hours a day.

A sharp conflict in the evidence took place upon this proposition. It is claimed by the respondent that in some instances where time and one-half for overtime is paid, employees, and especially those who are not permanently employed by the company, will "slack" on the job the seventh and eighth hours for the purpose of getting over into the ninth hour to get the high pay. Respondent therefore claims that the extra pay for overtime is a reward for slack work on the part of the workers. This accusation is bitterly denied by the complainants, who claim that the workers generally would prefer the eight-hour day at the lower wage than the nine-hour day at the higher wage. The evidence is so conflict-

ing that the court must, of course, call to its aid its general knowledge of human nature.

Overtime should not be considered in the light of extra pay; the wage should be fair on the eight-hour basic day. Overtime should be considered as a penalty upon the company to prevent the long hours and exhaustion of the workers. It is evident, therefore, that the company should not be penalized when, by reason of circumstances over which it has no control it may be necessary to run the plant a little longer than the eight-hour day in order to save loss which would otherwise occur. On the other hand, there must be some provision which would prevent the management from taking advantage of that situation to work long hours for the mere purpose of making extra profits. The matter of overtime should also be so adjusted as that it would not be a temptation to an unfaithful worker to slack his work during the eight-hour period in order to reap the reward of the higher wage in the ninth and tenth hours.

Another serious controversy in the case arises over the question of the weekly guarantee. It seems from the evidence that it has been the custom of packing companies such as the respondent to guarantee to its workers forty-four hours employment per week. This custom never has prevailed in the respondent's plant, but under the previous contract there was a guarantee of forty hours per week. The evidence shows that the plant has been running so continuously prior to the trial of this case that the matter of the guarantee was of little consequence; but the complainants are very insistent that such a guarantee shall be provided. The theory of the workers is, of course, that in the absence of such a guarantee the employees are wholly dependent upon the continuity of operation. If the plant operates three or four days a week the earnings of the workers
31 fall so low that it is impossible for them to live decently, and that any wage fixed by this court might be made an unfair wage by the company limiting its operation. The respondent, on the other hand, claims that some of its workers, and especially its transient workers who remain with it for a very short time, take advantage of this guarantee, refusing at times to respond when they are needed for work, but always claiming the benefits of the guarantee in case the work has been slack and they have not been offered the forty hours per week employment. The respondent, however, frankly states that it recognizes that the regular employees must be given such continuous employment as will enable them to decently support themselves. The respondent in this connection stated in open court that any fair and reasonable rule promulgated in the order will be observed by the respondent.

This case involves one of the most serious considerations in connection with the administration of the industrial act. The respondent is not a public utility; it is one of those industries which are declared to be impressed with public interest; but the court has no power to regulate the prices which it may charge for its commodities as may be done in regard to public utilities. Therefore, any order made by this court fixing a wage must be very carefully considered in view of the fact that the respondent is doing business, and must

continue to do business, upon an open and more or less competitive market, and in view of the fact that the plant cannot be expected to operate for any long period of time at a loss. On the other hand, it may be stated that there is an irreducible minimum below which workers cannot be and must not be required to work. Unfortunately, the laboring man is not in a position to take advantage of rising markets or prosperous conditions to make a big profit at any time. This the business concern may do and often does do. Just at the present time the business of the respondent, as shown by the evidence, is not in a prosperous condition. It is admitted, however, that the loss which occurred to the respondent last year was caused by the world-wide business conditions which are believed and at least are hoped to be temporary. The respondent frankly states that
32 the prospects for the coming year are brighter, and it is hoped that the business will be more prosperous.

The industrial law of this state is intended to be as fair to capital as it is to labor. It is specifically declared that it is necessary in the promotion of the general welfare that labor employed in these essential industries shall receive a fair wage and that capital invested therein shall receive a fair return. Any order made by this court, after having been put into force and effect for a period of sixty days, may be reviewed at the instance of either party and additional evidence introduced to show its practicability, its impracticability, its reasonableness, or its unreasonableness. The order made in this case at this time will be made in view of that provision of the law. The business conditions of the day are unusual and unstable, and sixty days or ninety days, may bring about such changes as would require a revision of any order made herein.

In view of all the evidence the court finds that——

(1) In this industry the principles of the open shop, as now and heretofore existing by agreement of the parties, should be approved by the court and should continue.

(2) Employees, whether organized or unorganized, should receive wages as shown in schedules hereinafter set out, which said wages the court finds to be reasonable and fair.

(3) A basic working day of eight hours should be observed in this industry; but a nine-hour day may be observed, not to exceed two days in any one week, without penalty: Provided, however, That if the working hours of the week shall exceed forty-eight in number, all over forty-eight should be paid for at the rate of time and one-half; furthermore, in case a day in excess of the eight-hour day shall be observed more than two days in any one week, all over eight hours, except for said two days in said week, should be paid for at the rate of time and one-half, even though the working hours of the week be forty-eight hours or fewer.

(4) No guarantee of time per week is specifically found at this time; but sufficient work should be offered to the regular employees in each and every month so that the monthly earnings of
33 regular workers will be sufficient to sonstitute a fair wage under the Kansas Industrial law, as heretofore defined by this court.

(5) The management of the industry should, whenever possible, notify the workers in case the plant is not to operate the following day, by bulletins posted at the time clock prior to the closing hour, and if that be impossible then by signal from the steam whistle the following morning, to make it unnecessary for workers to come to the plant when there will be no work.

(6) Hours of beginning work should be set by the management and may be changed when necessary; but reasonable notice should be given the employees of changes.

(7) The seniority rule as heretofore observed in the industry may continue.

(8) Reasonable rules and regulations in regard to conduct about the plant may be made from time to time as the same may be necessary, and reasonable notice of all such should be given by posting at the time clock or personal notice to employees.

(9) Women workers should receive the same wages as men engaged in the same class and kind of work.

(10) Toilets and dressing rooms used by the women workers should be in charge of a woman.

(11) Piece-work rates should be paid in accordance with piece-work schedule herein set out.

(12) Minor details in regard to work and wages cannot be set out in an order of this court; but whenever differences arise at any time they should be taken up by the grievance committee of the employees and the management, and reasonable time should be allowed for consideration and adjustment of the differences.

(13) The total working time for women employees, inclusive of overtime, should not exceed fifty-four hours in any one week and not more than nine hours in any one day.

(14) Workers paid by the week or day, if employed within the plant and not within the office or sales department, should be
34 subject to hours of work and overtime as other employees under the terms of finding No. 3 hereof.

(15) In view of the reduction in the cost of necessities and the comforts of life, the wages hereinafter set out in the schedules are, in the opinion of the court, the equivalent in purchasing power of the wages paid under said contract of 1920.

(16) The temporary order heretofore made in this case was at the time reasonable and fair and should stand and be complied with by the respondent company, beginning on the date of said temporary order and continuing until May 1, 1921.

(17) The respondent company should, within a reasonable time, furnish suitable room for its employees in which to eat their mid-day lunch, well ventilated and apart from those portions of the packing house in which the work of slaughtering animals and dressing and preparing the packing products are carried on, and apart from toilets and dressing rooms.

(18) The following is a fair and reasonable schedule of minimum wages to be paid by the respondent company to its respective employees, effective May 2, 1921, to wit:

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(This schedule lists each station, employment or job, with the hourly wage scale to be paid therefor, separating and classifying the stations, employments or jobs by departments, of which there are twenty-four.)

(19) The establishing of the above minimum-wage schedule should not in any way be construed as restricting or preventing the respondent from paying a higher wage when the same is deemed advisable.

(20) In the departments operating twenty-four hours a day and seven days a week, each employee therein shall be entitled to one day off each week. In other departments work performed on Sunday and legal holidays should be paid for at the rate of time and one-half.

An order will issue in accordance herewith.

Judges McDermott and Crawford concur.

35

EXHIBIT "E."

(Caption omitted.)

ORDER.

Now, on this 2nd day of May, 1921, this matter comes on for final order. The Court being fully advised in the premises, having received all the evidence offered by the parties hereto, having carefully considered the same and having made Findings of Fact which are set out in the Opinion herein and are hereby referred to, it is by the Court ordered that—

(1) In this industry the principles of the open shop as now and heretofore existing by agreement of the parties, are approved by the Court and shall continue.

(2) Employees, whether organized or unorganized, shall receive wages as shown in schedules hereinafter set out.

(3) A basic working day of eight hours shall be observed in this industry; but a nine hour day may be observed not to exceed two days in any one week without penalty; providing, however, that if the working hours of the week shall exceed forty-eight in number, all over forty-eight shall be paid for at the rate of time and one-half; furthermore, in case a day in excess of the eight hour day shall be observed more than two days in one wek, all over eight hours, except for said two days in said week, shall be paid for at the rate of time and one-half, even though the working hours of the week may be forty-eight hours or fewer.

(4) No guarantee of time per week is specifically ordered; but sufficient work shall be offered to the regular employees in each and every month so that the monthly earnings of regular workers will be sufficient to constitute a fair wage under the Kansas Industrial Law, as heretofore defined by this Court.

(5) The management of the industry shall, whenever possible, notify the workers in case the plant is not to operate the
35 following day, by bulletins posted at the time clock prior to the closing hour, and if that be impossible, then by signal

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from the steam whistle the following morning, to make it unnecessary for workers to come to the plant when there will be no work.

(6) Hours of beginning work shall be set by the management and may be changed when necessary; but reasonable notice shall be given the employees of changes.

(7) The seniority rule as heretofore observed in the industry may continue.

(8) Reasonable rules and regulations in regard to conduct about the plant may be made from time to time as the same may be necessary and reasonable notice of all such shall be given by posting at the time clock or personal notice to employees.

(9) Women workers shall receive the same wages as men engaged in the same class and kind of work.

(10) Toilets and dressing rooms used by the women shall be in charge of a woman.

(11) Piece work rates shall be paid in accordance with piece work schedule herein set out.

(12) Minor details in regard to work and wages can not be set out in an order of this Court; but whenever differences arise at any time they should be taken up by the grievance committee of the employes and the management and reasonable time shall be allowed for consideration and adjustment of the differences.

(13) The total working time for women employees, inclusive of overtime, shall not exceed fifty-four hours in any one week and not more than nine hours in any one day.

(14) Workers paid by the week or day, if employed within the plant and not within the office or sales department, shall be subject to hours of work and overtime as others employed under the terms of Finding No. Three hereof.

(15) The temporary order heretofore made in this case shall stand and be complied with by the respondent company, beginning on the date of said temporary order and continuing until May 1st, 1921, the date of this order.

37 (16) The respondent company shall, within a reasonable time, furnish a suitable room for its employees in which to eat their mid-day lunch, well ventilated and apart from those portions of the packing house in which the work of slaughtering animals and dressing and preparing the packing products are carried on, and apart from toilets and dressing room.

(17) The following schedule of minimum wages shall be paid by the respondent company to its respective employees, to-wit:

(The schedule, above referred to, lists each station, employment or job, with the hourly wage scale to be paid therefor, separating and classifying the stations, employments or jobs by departments, of which there are twenty-four.)

(18) The establishing of the above minimum wage schedule shall not in any way be construed as restricting or preventing the respondent from paying a higher wage when the same is deemed advisible.

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(19) In departments operating twenty-four hours a day and seven days a week, each employee therein shall be entitled to one day off each week. In other departments, work performed on Sundays and legal holidays shall be paid for at the rate of time and one-half.

This order shall take effect and be in force on the 1st day of May, 1921, and shall continue until changed by the Court or changed by agreement of the parties with the approval of the Court. W. L. Huggins. Jas. A. McDermott. Jno. H. Crawford.

Attest: [Seal.] Carl W. Moore, Clerk.

38 (2) That on June 20, 1921, pursuant to stipulation of the parties, the court entered an order that the foregoing petition be considered as an alternative writ of mandamus, to which the defendant should make return.

(3) On the 30th day of June, 1921, the defendant filed its return to the said petition, considered as an alternative writ of mandamus, which return is in the following words and figures, to-wit:

39 (Caption omitted.)

RESPONDENT'S RETURN TO ALTERNATIVE WRIT OF MANDAMUS HEREIN.

Pursuant to the order of this Court of June 20, 1921, that the petition filed herein on June 18, 1921, be considered as an alternative writ of mandamus directed to this respondent, return is now made thereto by said Chas. Wolff Packing Company as follows: to-wit:

(1) Said petition considered as such alternative writ does not state facts sufficient to invoke the judicial powers of this court as provided and limited by the Constitution of the State of Kansas.

(2) The relief asked in said petition and writ, to-wit, the enforcement by process of this court of the orders set out as exhibits "C" and "D" of said petition and writ, would, if granted, require this respondent to pay to private individuals, not parties to this proceeding, large sums of money for an indefinite period, and this court is without jurisdiction to render or enforce such judgment; and, such writ if granted would deprive respondent of its property without due process of law and deny it the equal protection of the laws contrary to the provisions of the fourteenth amendment to the Constitution of the United States; and, in violation of sections #2, 5 and 18 of the Bill of Rights in the Constitution of the State of Kansas.

(3) That the orders, exhibits "C" and "D", are too indefinite and uncertain as to the employees intended to be beneficiaries thereunder to be capable of enforcement by writ of mandamus.

(4) The persons intended to be benefited by said orders exhibits "C" and "D", to-wit, persons employed by respondent in occupations set out in said orders, have a plain and adequate remedy in the ordinary course of the law given specifically by Sec. 23 of Chapter 29,

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laws of 1920, expressly designed by the legislature to be used in the circumstances alleged in said petition and writ.

40 (5) Respondent denies that the petitioner is a duly and legally constituted tribunal with authority and jurisdiction over and concerning the matters and things alleged in said petition and writ; and, avers that the jurisdiction over the business property and affairs of respondent shown by said orders exhibits "C" and "D," constitute an invasion of and trespass upon rights assured and secured to the respondent by the constitution and laws of the United States; and of the State of Kansas:

(*a*) Said orders were and are not within the jurisdiction intended by Chapter 29 laws 1920 to be conferred upon the petitioner; for that, said orders were intended to have, and actually can have, no effect upon the general business of manufacturing or producing food products whereby in any stage of the process, substances are being converted either partially or wholly from their natural state to a condition to be used as food for human beings; and, affect, and were intended by petitioner to affect, the business and operations of this respondent alone, thereby denying respondent the equal protection of the laws of the State of Kansas.

(*b*) As administered by petitioners in making said orders said statute, although in form a general law, is not given a uniform operation throughout the State; for that all other employees within the State are left wholly free to employ labor upon terms satisfactory to such employees and their employers.

(*c*) Said orders deny to respondent the equal protection of the laws in failing to require persons employed by respondent to work for the wages and upon the conditions fixed by said orders, leaving to said employees freedom to make such agreements for their services as they pleased, but depriving respondent of like freedom of contract, notwithstanding such employees are, whilst pursuing the occupations covered by said orders, engaged in the operation of an industry expressly declared by said statute to be affected with a public interest; and without the labor of persons in such oc-

41 cupations the operations of such industry could not be carried on.

(*d*) Said orders deny the respondent the equal protection of the laws because within this state all other employers similarly situated are left entire freedom in the employment of labor and respondent is deprived of such freedom.

(*e*) Said statute and orders constitute class legislation discriminating against respondent as an employer and in favor of other employers; and, in providing that only in certain pursuits shall wages of employees be regulated, when no legal basis exists for regulating wages paid in the pursuits and industries mentioned in said statute, and not regulating wages in other pursuits and industries employing labor.

(*f*) Respondent's business is not and cannot be affected with a public interest as to the amount of wages it pays to employees, as the public does not pay, and is in no proper sense whatever, asked to pay, and could not be required to pay, any part of such wages,

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and said statute in providing for the regulation of wages of respondent's employees deprives it of its liberty and property without due process of law.

(*g*) The intended, actual and necessary effect of said orders is to increase the respondent's expenses of operation and prevent it from earning a reasonable return (in fact any return) upon its invested capital, and to confiscate its property; and take it without compensation for the benefit of employees in form of wages.

(*h*) The necessary effect of said orders impairs the obligation of existing contracts made by respondent with some of the employees whose wages are regulated by said orders; and thereby said orders violate the provisions of the United States Constitu-
42 tion forbidding any state to pass any law impairing the obligation of contracts.

(*i*) Said statute and said orders are, in part, in conflict with regulations for the sanitation of respondent's packing house prescribed by Act of Congress; and an attempted regulation of interstate commerce in meat prepared for interstate shipment under regulations prescribed by Congress, and, in part in conflict with the commerce clause of the Federal Constitution.

(6) Respondent admits the allegations of paragraph numbered two (2) of said petition and writ.

(7) Respondent admits the allegations of paragraph numbered three (3) of said petition and writ.

(8) Respondent denies that it voluntarily appeared and filed an answer in the proceeding set out in paragraphs numbered three (3) and five (5) of said petition and writ; and avers that it was served with an order issued to respondent to appear and answer the complaint set out in paragraph numbered three (3), and responsive thereto filed the answer set out as exhibit "B" of said petition and writ.

(9) Respondent admits the allegations of paragraph numbered six (6) of said petition and writ, except the allegation concerning impending strikes, and avers that the impending strike, if any there was in the packing house business in the spring of 1921 was adjusted by agreement and not by compulsory process or order of any court or public officer acting as such; and denies that the basis of the order exhibit "c" is practically identical with the temporary adjustment referred to in said paragraph; and avers that said order cannot be sustained by reference to voluntary agreement made between employers and employees.

43 (10) Respondent admits the allegations of paragraph seven (7) of said petition and writ.

(11) Respondent admits the making of said order of May 2, 1921, (served upon respondent on May 6, 1921), but denies that said order was regularly made and avers said order to be irregular, illegal and void for that on March 3, 1921, pursuant to an order made by said Court, the complainants in said complaint filed January 19, 1921, and this respondent, duly appeared before said court and a hearing thereupon was begun and evidence introduced upon the issues made by said complaint and said answer; that the

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hearing and the taking of evidence in said proceedings in said Industrial Court continued during March 3, 4, 7, 8, 9, 10 and 11; that during said hearing on several different days the said court was represented only by the said W. L. Huggins; the said Clyde M. Reed and the said George H. Wark not being present, and at times during this hearing, the said George H. Wark and Clyde M. Reed, either together or separately were holding hearings in other matters and acting as members of said Court, notwithstanding the said hearing in the matters involved in said complaint was then in progress before the said W. L. Huggins, sitting alone. That said hearing was concluded with the said W. L. Huggins alone appearing as a member of said court, and at such conclusion the said W. L. Huggins announced that the cause would be taken under advisement and at some future date a decision and order entered. That afterwards and after the said George H. Wark and the said Clyde M. Reed ceased to be members of said court a transcript of the evidence taken in said cause was made by the then stenographer of said court and submitted to the said James T. McDermott and John H. Crawford when and after they became acting members of said court, and, their examination of said transcript is all the information concerning the evidence introduced in said cause that either the said James T. McDermott or the said John H. Crawford have concerning such evidence; that neither the said James T. McDermott nor the said John H. Crawford took part in or were present at any of the hearings and did not hear any of the witnesses testify and were not members of the said court at the time said witnesses testified; that the oral testimony was given by more than forty (40) witnesses and in addition to such oral testimony a large number of documents were introduced in evidence concerning which many of the witnesses were interrogated by counsel both on direct and cross examination. And thereupon respondent says that neither the said James T. McDermott nor the said John H. Crawford were, or are, competent to pass upon the issues of fact relative to which said oral testimony was introduced and for that reason incompetent to make a decision in the matters involved in said complaint and in said answer. That notwithstanding the said incompetency of the said James T. McDermott and the said John H. Crawford to participate in or render any decision or make any order based upon or conditioned by said oral evidence, on or about May 6, 1921, the petitioner pretending to have the power so to do, caused to be served upon the respondent on May 6, 1921, said order.

(12) Respondent admits that it has not complied with either of said orders exhibits "C" and "D"; and avers that both of said orders are and have been wholly unjust, unreasonable, unlawful, void and without effect for the reasons and because of the facts and circumstances herein alleged; that within ten days after the service upon it of said order exhibit "C", respondent duly filed in this court its petition as required by Sec. 12 of Chap. 29, laws of 1920, and within ten days after the service upon it of said order exhibit "D", respondent filed another petition in this court as required by said section

12; and, thereafter, within thirty days after the service upon it of said order exhibit "D" respondent began an action in the District Court of Shawnee County, Kansas, to enjoin the petitioner from attempting to enforce said order exhibit "D" and to vacate said order, which action is now pending in said district court undetermined, and said district court by due service of summons on the petitioner and its members has jurisdiction of said action and of the petitioner, and because:

(*a*) The respondent at the time said orders were entered was and had been for several years operating its said property at an actual loss; that is to say its revenue from the sale of its products was and had been much less than the cost of raw material plus the actual and necessary expenses of producing such products; that at the time of said hearing and before and after respondent's capital was, had been and is now, seriously impaired by losses sustained in operation; that it was, has been, and is now, compelled to and does buy live
45 stock and sell the products thereof in highly competitive markets over which respondent cannot and does not exercise any control; that because of its situation and the requirements of the business in which it is engaged it has not, cannot, and does not control to any appreciable extent the times and quantities of offerings of live stock at its plant by owners thereof; and, in order to remain a going concern must, within its capacity, accept such offerings as and when made and pay therefor at prices fixed by facts, conditions and circumstances over which neither respondent nor anyone else had, or could have, any control; that the said orders, if put in force compelling respondent to pay the wages therein prescribed would actually and necessarily increase respondent's actual and essential expenses of operation, in the single item of wages paid to employees whose occupactions are set out in said orders, more than Eight Hundred ($800.00) Dollars per week, and thereby actually and inevitably dimi-ished respondent's income from operation by more than Forty Thousand ($40,000) Dollars per annum, and thus respondent's invested capital be further impaired to that extend; and the property and business owned and conducted by respondent inevitably thus would be confiscated, and by said orders transferred from respondent to such employees in the form of increased wages; that prior to the service of said order exhibit "D" respondent's property was being operated to the usual average seasonal capacity; that the occupations set out in said order were substantially all filled by persons employed by respondent in the usual way, that is, by agreement as to the price said persons were willing to sell and respondent was willing to buy their labor; that for many of such occupations there were many more applicants, ready, able and willing to fill them than there were places to fill; that at the wages then offered by respondent it would easily have secured the services of twice the number needed in many of such occupations; and it then was conducting its business in the usual
46 and ordinary manner, and then nor previously was there even a remote possibility that respondent's business would be interrupted on account of the wages offered and paid to employees

and other seeking employment; that none of its employees struck work on account of wages, hours of labor, or conditions; and no occasion, public or otherwise, existed or threatened for the attempted trespass upon respondent's constitutional right to employ labor at agreed compensation, and manage its own property; that neither at the time of said hearing, before nor since, has the food supply of the people of this State been even remotely threatened; that no industrial strife of any kind threatened respondent's business or property or the public peace; and that no fact or circumstance then or thereafter existed or now exists affording the slightest justification for the petitioner to interfere between respondent and its employees in the matter of wages and hours of work. That respondent now sets up and specially claims the rights, privileges and immunities assured to it by the fourteenth amendment to the Constitution of the United States providing that no State shall deprive any person of life, liberty or property without due process of law, and avers that the necessary operation and effect of said orders upon respondent's business and property upon said facts and circumstances is to deprive it of its property without due process of law in violation of said amendment, and, to deprive respondent of its liberty within the meaning of said amendment.

(*b*) That to avoid loss it is essential that live stock and particularly hogs, should be slaughtered, dressed and placed in refrigeration as soon after arrival at respondent's packing business as such work can be done, and, when begun, such work of slaughtering, dressing and refrigerating must proceed uninterruptedly with the greatest possible dispatch; that the respondent's capacity is so limited that it does not and cannot continuously engage in
47 such work and does not and cannot carry on such operations with shifts of men working eight hours to a shift, both because of the difficulty of securing a sufficient number of competent workmen willing to accept employment for only a few hours daily, and because of insufficient plant capacity and facilities in refrigerating and curing products continuously to slaughter and dress live stock, respondent must, and does, cease killing and dressing such live stock when the available supply is slaughtered, and use the same workmen in other work; that this intermittent requirement of its business makes it essential to competitive operation that at varying intervals employees affected by said orders should continue at work sometimes more and sometimes less than eight hours in a single day; and prior to 1920 this was and for many years had been the regular practice and rule in respondent's business; and until 1920 no complaint of this practice had been made, and no attempt by any employee, or anyone else, to compel respondent to pay any employee more after, than before, the completion of eight hours' work; and in that year respondent for the first time learned that to prevent laborers working longer than eight hours in any one day it was proposed that such workmen should be rewarded for working more than eight hours and employers penalized by the payment to such laborers of a fifty per-cent. increase in hourly pay after eight hours' continuous work. Respondent avers that the intended, ac-

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tual and necessary effect of the so-called eight hour requirement in said orders is merely to impose an increase of operating costs upon respondent for the benefit of the employees; and, that said orders could not possibly result in any diminution of the hours of work of employees affected thereby; that, aside from mere pretense to the contrary, none of said employees would willingly accept a reduction in their weekly pay by ceasing work at the expiration of eight hours; and, the purpose and only purpose in advocating, and attempting to enforce, the so-called eight hour day by requiring employees generally and respondent particularly to pay higher wages to employees after right hours, is to increase the individual incomes of employees by paying them an unreasonably high rate of wages under the pretense of safe guarding their health and well being. Respondent further avers the petitioner court rejected respondent's proposal and argument that if the motive for establishing a "basic eight hour day" was a real desire to preserve the employees' health and wellfare, offering a reward, in the form of fifty per-cent. increase in hourly pay, was not an inducement which could reasonably be expected to accomplish the desired purpose; but that authorizing employees to pay only one-half of the hourly wages, after eight hours' continuous work, would inevitably preserve the workmen's health by causing them to cease working at the expiration of eight hours. Respondent avers that the intended, actual and necessary effect of said orders fixing maximum hours during which respondent's employees shall work, if enforced, would increase respondent's expenses of operation, deprive it of its right to agree with any person to work for such number of hours as might be provided by contract; impairs the obligations of contracts respondent had and has with some of its employees working by the week and by the month, and deprives respondent of that freedom in respect of each of said particulars assured to all persons by Sec. 10 of Act 1, of and by the fourteenth amendment of the Constitution of the United States, and sets up such constitutional rights in respect of the provisions of said orders relating to hours of work by its employees and payment to any of them for over-time at an increased rate.

(c) That at the time said orders were made there were many other persons and corporations engaged in operation of packing houses within the State of Kansas, and persons employed therein were doing substantially the same kind of work as the employees of respondent affected by said orders were and are doing; that there are many other persons and corporations within this State engaged in the manufacture and preparation of various articles of human food, and employing persons under conditions not legally distinguishable as to freedom of contract from respondent; that none of such persons or corporations are affected by said orders or either of them; and of all the employers of labor engaged in the manufacture and preparation of articles of human food within the State of Kansas respondent is the only one affected by said orders; and thereby deprived of freedom of contract with persons willing to work for respondent upon terms satisfactory to both; that if the

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wages and hours of work fixed by said orders are just and reasonable and enforcible in respect of respondent's business and property and respondent's business is subject to such regulation, all of which respondent denies, then respondent is denied the equal protection of the laws of the State of Kansas in violation of its rights, privileges and immunities guaranteed by the fourteenth amendment to the Constitution of the United States, in that it is denied freedom to employ persons to labor upon and in its property upon terms satisfactory to both parties, while other persons within said State similarly engaged are wholly free to enter into such contracts and employ labor upon such terms and conditions as may be agreed upon.

(13) Respondent respectfully reserves unto itself all and all manner of objections to this proceeding on the ground that Section 12 of the said Industrial Court act is an unconstitutional grant of legislative power to this Court, and is an unconstitutional enlargement of the original jurisdiction conferred upon this Court by Section 3 of Article 3 of the Constitution of the United States.

(14) The respondent denies generally all of the allegations, averments and statements in said petition and writ contained except such as are specifically admitted by this return.

And now, may it please the court, having fully answered all of the matters and things set out in said alternative writ, and made
50 due return thereto, this respondent most respectfully prays that the said petitioner take nothing by this proceeding and that this court deny to said petitioner any relief whatsoever in the premises. D. R. Hite, Attorney for Respondent.

(Verified by Chas. Wolff, Jr., President of the Chas. Wolff Packing Company.)

51 4. Upon the filing of such return, pursuant to the stipulation of parties, the questions of law arising upon the face of the petition and of the return, as though upon demurrer to the petition, and a demurrer to the return, were, by the court, directed to be argued. The petition to be considered as an alternative writ of mandamus, and the answer to be treated as the return thereto.

5. On July 6, 1921, the questions of law referred to in the preceeding paragraph were duly argued and on July 11, 1921, the court entered the following memorandum decision upon said questions of law:

"The Court holds:

That the action can be prosecuted in the name of the Court of Industrial Relations.

That the act establishing the Court of Industrial Relations operates on both employer and employe.

That the wages paid employes in a packing house is a matter of public concern and the determination of the sufficiency of such wages is a question affected by the public interest.

And, that the law does not violate any provision of the Fourteenth Amendment to the Constitution of the United States.

Hon. A. L. Noble, of Wichita, is appointed Commissioner to take testimony and make findings of fact and conclusions of law and report the same to the court."

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[Title omitted.]

ORDER APPOINTING RECEIVER.

And now it appearing to the Court that issues of fact are joined, it is now ordered that A. L. Noble of Wichita, Sedgwick County, Kansas, be and he is hereby appointed a Commissioner of this Court to take testimony in the above entitled cause: The Commissioner is hereby authorized and empowered to administer oaths, to summon witnesses, and to compel their attendance and the giving of their testimony before him, to preserve order at the place where such testimony is being taken, to hear and record the testimony, to make findings of facts therefrom and conclusions of law thereon, and to do all other necessary and requisite things for the carrying out of his duties as commissioner. The said Commissioner is hereby required to file his oath of office in the office of the Clerk of the Supreme Court; to commence the taking of testimony without unnecessary delay, at such times and places as he shall determine, and that as soon after the conclusion of the taking of the testimony as is reasonably possible, the Commissioner shall file in the office of the Clerk of the Supreme Court his report of the testimony so taken, his findings of fact and his conclusions of law.

Witness my hand and the seal of said Supreme Court hereto affixed in my office in the City of Topeka, this 11th day of July, 1921. [Seal.] D. A. Valentine, Clerk Supreme Court.

6. Thereafter, on the 8th day of October, 1921, the Supreme Court of Kansas rendered its opinion in support of the foregoing memorandum decision, as follows:

(Reported 109 Kan., 629.)

No. 23625.

THE CHAS. WOLFF PACKING COMPANY, Plaintiff,

vs.

THE COURT OF INDUSTRIAL RELATIONS, Defendant.

No. 23702.

THE COURT OF INDUSTRIAL RELATIONS, Plaintiff,

vs.

THE CHAS. WOLFF PACKING COMPANY, Defendant.

Original Proceedings in Mandamus. Questions of Law Decided.

SYLLABUS BY THE COURT.

Marshall, J.

1. Under Chapter 29 of the Laws of 1920, an action may be brought in the Supreme Court by the Court of Industrial Relations to compel obedience to an order made by it.
2. Obedience to an order made by the Industrial Court fixing a schedule of wages and hours of labor may be compelled by an action in mandamus.
3. An action in the Supreme Court to compel obedience to an order made by the Court of Industrial Relations does not call for the exercise of legislative powers.
4. An order made by the Court of Industrial Relations does not require the approval of the Supreme Court before becoming effective and binding.
5. The petition filed in this action alleged that such an emergency existed as justified the Court of Industrial Relations in making an investigation.

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6. Chapter 29 of the Laws of 1920, the court of industrial relations act, does not violate the fourteenth amendment to the constitution of the United States; those affected by the orders made under that law are not deprived of liberty or property without due process of law, and are not denied the equal protection of the law. Employes in the kinds of business named in the law are governed by the orders of the court of industrial relations; the wages paid such employes are affected with a public interest so as to subject such wages to regulation by the court; orders made under the law do not deprive employers nor employes of the freedom of contract concerning wages in violation of the fourteenth amendment to the constitution of the United States; and classification of the businesses to which the law applies is not arbitrary nor unjust.

55 The opinion of the court was delivered by

MARSHALL, *J.*: This is an original proceeding in mandamus to compel the Wolff Packing Company, hereinafter named the defendant, to put in effect a scale of wages to be paid by it to its employes and to establish hours of labor as ordered by the court of industrial relations, hereinafter named the plaintiff. The defendant answers, and presents a number of questions of law in addition to those of fact. The plaintiff requests that the questions of law be disposed of in advance of the final hearing.

The defendant is operating a packing house in the city of Topeka. On March 21 and May 2, 1921, the plaintiff made orders and afterward served them on the defendant fixing wages to be paid and hours of labor to be observed by it in operating its business. The defendant refused to obey these orders. The questions of law, at the direction

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of the court, have been briefed and argued, and will be disposed of at this time. This is authorized by section 278 of the code of civil procedure. It may be considered that the plaintiff has demurred to that part of the defendant's answer which presents questions of law.

56 1. The defendant contends that the court of industrial relations "cannot sue in its own name," and argues that the statute creating the court does not authorize it to so prosecute actions in this court. Section 12 of the industrial court act in part reads:

"In case of the failure or refusal of either party to said controversy to obey and be governed by the order of said Court of Industrial Relations, then and in that event said court is hereby authorized to bring proper proceedings in the supreme court of the state of Kansas, to compel compliance with said order."

Section 27 of the code of civil procedure in part reads:

"A person expressly authorized by statute, may bring an action without joining with him the person for whose benefit it is prosecuted."

Section 265 of the code of civil procedure provides that:

"An injunction may be granted to enjoin the illegal levy of any tax, * * * and any number of persons whose property is or may be affected by a tax assessment so levied * * * may unite in the petition filed to obtain such injunction."

Under the last statute the parties named may not only file the petition but may prosecute the action to final completion. Section 419 of the code of civil procedure provides for an action by the personal representative of a deceased person for his wrongful death, and section 420 provides that if the party whose death has been caused is a resident of this state, and no personal representative has been appointed, the action may be brought by the widow, or, where there is no widow, by the next of kin of such deceased. Under
57 this section actions for wrongful death are constantly commenced and prosecuted to final judgment by the widows or the children of the deceased persons.

Section 8446 of the General Statutes of 1915, a part of the law establishing the board of railroad commissioners, in part reads:

"In case any railroad company, or any such officer, agent, employee, or person, shall violate or shall refuse or fail to obey any such order lawfully made by said board of railroad commissioners, any person aggrieved thereby may institute and prosecute mandamus proceedings in the supreme court, in the name of the state on the relation of such person, to compel compliance with and obedience to such order; and in any case where in the opinion of the board of railroad commissioners the interest of the public requires it, such board shall require such proceeding to be brought, and such pro-

ceeding shall then be brought by the attorney-general in the name of the state." (Laws of 1901, ch. 286, sec. 39.)

Section 8447 in part reads:

"Whenever a proceeding brought in the supreme court under section 38 of this act by the attorney for the board, or the attorney-general, upon the direction of the board of railroad commissioners," etc. (Law 1901, ch. 286 sec. 39, as amended by Law 1907, ch. 268, sec. 8.)

Under these statutes it was held that:

"The attorney for the board of railroad commissioners is the proper officer to bring an action in the name of the state to compel compliance with an order of the board." (The State, ex rel., v. Railroad Companies, 85 Kans. 649, 118 Pac. 872. Syl. Sec. 1.)

58 Section 8367 of the General Statutes of 1915 reads:

"The commission may compel compliance with the provisions of this act and compel compliance with the orders of the commission by proceedings in mandamus, injunction or other appropriate civil remedies, or by appropriate criminal proceedings in any court of competent jurisdiction." (Laws 1911, ch. 238, sec. 39.)

In the city of Emporia v. Telephone Co., 90 Kan. 118, 133 Pac. 858, this court said:

"Section 39 empowers the utilities commission to compel compliance with its orders by proceedings in mandamus, injunction or other appropriate civil or criminal remedies." (p. 127.)

The State, ex rel., v. Gas Co., 88 Kan. 165, 127 Pac. 639 was an action brought under the public utilities law by the state on the relation of the attorney for the public utilities commission, and no question was raised about the authority of the attorney to so prosecute the action.

The industrial court law is a remedial statute and should be liberally construed to promote its object. (Gen. Stat. 1915, sec. 11829; Lumber Co. v. Douglas, 89 Kan. 308, 318, 131 Pac. 563.) A liberal construction is that the statute gives to the court authority to prosecute in its own name actions of this character. The statute expressly authorizes the court of industrial relations to bring proper proceedings to compel compliance with its orders. Mandamus is a proper proceeding, and the court can bring it. The industrial court is not directly interested in the result of this action; the state is the party that is interested, but the state has authorized the court to bring the action. This is at least one of the ways in which it may be brought.

2. The defendant contends that the purpose of this action
59 can not be accomplished by proceedings in mandamus, as the action is brought to compel the payment of definite wages to certain employes, and those employes have a right to bring actions

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against the defendant to recover judgments for wages legally due them. The argument is unsound for the reason that the action is not brought for the purpose named. It is brought to compel the defendant to obey an order of the court of industrial relations fixing a scale of wages and establishing hours of labor to be observed by the defendant in its business. Under the law directing that actions shall be brought by the real party in interest, unless otherwise specifically authorized by statute, the plaintiff cannot by an action in mandamus compel the defendant to pay any wages that may be due under the schedule ordered to be put in effect; such an action must be prosecuted by the workman to whom the wages are due. The present action is analogous to one brought by competent authority to compel a public service corporation to put in effect rates ordered by a proper, controlling body. The public service corporation can be compelled, in an action in mandamus to put into effect such rates. Damages sustained by reason of the refusal of the public service corporation to obey the order of the controlling body can be recovered only in an action brought by the party injured.

3. Another contention of the defendant is that the nature of proceedings under section 12 of the industrial court act is legislative and not judicial. This contention is based on that provision of this section which gives to those who are governed by it the right to commence proceedings "to compel said Court of Industrial Relations to make and enter a just, reasonable and lawful order in the premises." It is argued that whether or not a legislative regulation is just and reasonable is not a judicial question.

60 The statute does not require the supreme court to say what are just, reasonable or lawful wages, and then direct the industrial court to issue an order putting those wages into effect. If the latter court should refuse to make any order on a proper application then this provision of the statute will operate, and the party complaining can, be prosecuting a proper proceeding in the supreme court, compel the industrial court to make an order which when made would be subject to judicial investigation in a proper action the same as any other order made by that court.

One difficulty with this contention of the defendant is that no one is complaining of the refusal of the industrial court to put in effect a schedule of wages just and reasonable or otherwise, but the defendant is resisting a schedule ordered by the court of industrial relations, an altogether different question, one that is not involved in the position now taken by the defendant nor in the answer filed by it. For this reason the defendant can not now avail itself of the objection, even if it were good.

City of Kansas City v. Railway Co., 59 Kan. 427, 53 Pac. 468;
The State v. Smiley, 65 Kan. 240, 68 Pac. 199;
The State v. Jack, 69 Kan. 387, 398, 76 Pac. 911;
Brown v. Gilpin, 75 Kan. 773, 90 Pac. 267;
The State v. Railway Co., 76 Kan. 467, 490, 92 Pac. 606;
The State v. Railway Co., 96 Kan. 609, 612, 152 Pac. 777;
8 Cyc. 787;
12 C. J. 760;
Hatch v. Reardon, 204 U. S. 152, 160-161.

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61 4. The defendant insists that the orders of the industrial court are not effective until approved by the supreme court. This is based on a statement made by this court in The State v. Howat, 109 Kan. 376, as follows:

"Resort to this court was authorized in terms which afford opportunity for the determination of issues upon the court's independent judgment, both with respect to the law and the facts. (Ohio Valley Co. v. Ben Avon Borough, 253 U. S. 287.) The appellate jurisdiction of this court not being available because the court of industrial relations is a nonjudicial body, its constitutional jurisdiction in mandamus was utilized. This jurisdiction is precisely the same as that of any court of general jurisdiction in mandamus, that is to say, in plenary, may be exercised to control the action of inferior tribunals (Bishop v. Fischer, 94 Kan. 105, 145 Pac. 890; In re Petitt, 84 Kan. 637, 114 Pac. 1071), and comprehends the power of superintending control to the full extent of which the writ of mandamus is capable." (p. 19.)

The defendant says, "this ruling leads to the conclusion that it is contemplated by the act that this court is to pass upon the facts and render judgment as to the reasonableness and justness of the orders." The conclusion reached by the defendant is not warranted by the language quoted, and the industrial court law does not contain any such provision. An order of the industrial court takes effect in the manner prescribed by law, and does not require the approval of the supreme court.

5. It is argued that the court of industrial relations can not exercise the extraordinary power of regulating wages to be paid by employers except in cases of emergency, and it is urged that no emergency is alleged. Section 7 of chapter 29 of the Laws of 1920 provides that:

62 "In case of a controversy arising between employers and workers, * * * engaged in any of said industries, * * * if it shall appear to said Court of Industrial Relations that said controversy may endanger the continuity or efficiency of service of any of said industries, * * * authority and jurisdiction are hereby granted to said Court of Industrial Relations, upon its own initiative, * * * to investigate said controversy, and to make such temporary findings and orders as may be necessary to preserve the public peace * * * to settle and adjust all such controversies by such findings and orders as provided in this act. It is further made the duty of said Court of Industrial Relations, upon complaint of either party to such controversy, * * * If it shall be made to appear to said court that the parties are unable to agree and that such controversy may endanger the continuity or efficiency of service of any of said industries, * * * to proceed and investigate and determine said controversy in the same manner as though upon its own initiative."

In the present action the petition alleges that complaint in writing was made by certain persons, authorized by section 7 of the industrial court act to make such complaint, a copy of which is attached

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to and is made a part of the petition filed in this action. That complaint alleged that a controversy had arisen between the defendant and its employes engaged in the operation of the defendant's packing business, and "that said controversy has endangered and is continuing to endanger the continuous operation and efficiency of service of said packing plant, and does affect and will affect the manufacture and production of the commodities necessary for human food within the state of Kansas and within the vicinity where said packing plant is now operating, and will and does endanger
63 the orderly operation of said packing plant." The petition sufficiently alleges that an emergency had arisen which justified the industrial court in taking cognizance of the complaint.

6. The defendant contends that the industrial court law and the orders sought to be enforced in this action violate the fourteenth amendment of the constitution of the United States in that the law and the orders made thereunder deprive the defendant of its liberty and property without due process of law, and deny to it the equal protection of the laws. To support this contention the defendant argues that employes can not be governed by the orders of the industrial court; that the wages of the defendant's employes are not affected with a public interest so as to subject such wages to regulation by the state; that the law and orders made by the industrial court deprive the defendant and its employes of the freedom of contract concerning wages; and that the classification of the businesses to which the law applies is arbitrary and unjust. These matters will be discussed in the order named.

The statute must be construed so as to uphold its validity if possible.

(Comm'rs of Cherokee Co. v. The State, ex rel. 36 Kan. 337, 13 Pac. 358;

In re Burnette, 73 Kan. 609, 85 Pac. 575;

Young v. Regents of State University, 87 Kan. 239, 124 Pac. 150;

The State, ex rel., v. City of Lawrence, 98 Kan. 808, 811, 160 Pac. 217.)

"The principle is universal that legislation, whether by Congress or by a State, must be taken to be valid, unless the contrary is made clearly to appear." (Reid v. Colorado, 187 U. S. 137, 153.)

The basis of the contention that the defendant's employes can not be governed by the industrial court is that those employes can not be compelled to work for the wages fixed, while the defendant is compelled to operate its plant and to pay those wages. Section 17 of the act provides:

64 "That nothing in this act shall be construed as restricting the right of any individual employee engaged in the operation of any such industry, employment, public utility, or common carrier to quit his employment at any time, but it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment for the purpose of hindering,

delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engage in what is known as "picketing", or to intimidate by threats, abuse, or in any other manner, any person or persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act."

It must be noted that this provision of the act takes from employes some of that which has been heretofore considered their legal right. Let us look now to the restrictions placed on the employer. Section 6 of the act reads:

"It is hereby declared and determined to be necessary for the public peace, health and general welfare of the people of this state that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security, and be supplied with the necessaries of life. No person, firm, corporation, or association of persons shall in any manner or to any extent, wilfully hinder, delay, limit or suspend such continuous and efficient operation for the purpose of evading the pur-
65 pose and intent of the provisions of this act; nor shall any person, firm, corporation, or association of persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit or suspend such continuous and efficient operation as aforesaid, except under the terms and conditions provided by this act."

Part of section 16 reads:

"It shall be unlawful for any person, firm or corporation engaged in the operation of any such industry, employment, utility, or common carrier wilfully to limit or cease operations for the purpose of limiting production or transportation or to affect prices, for the purpose of avoiding any of the provisions of this act; but any person, firm or corporation so engaged may apply to said Court of Industrial relations for authority to limit or cease operations, stating the reasons therefor, and said Court of Industrial Relations shall hear said application promptly, and if said application shall be found to be in good faith and meritorious, authority to limit or cease operations shall be granted by order of said court."

Part of section 17 reads:

"It shall be unlawful for any person, firm or corporation, * * * engaged in any of such industries, employments, utilities or common carriers to do any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, for the purpose or with the intent to hinder, delay, limit, or suspend the operation

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of any of the industries, employments, utilities or common carriers herein specified or indicated, or to delay, limit, or suspend the production or transportation of the products of such industries, or employments, of the service of such utilities or common carriers."

66 Section 20 in part reads:

"In case of the suspension, limitation or cessation of the operation of any of the industries, employments, public utilities or common carriers affected by this act, contrary to the provisions hereof, or to the orders of said court made hereunder, if it shall appear to said court that such suspension, limitation, or cessation shall seriously affect the public welfare by endangering the public peace, or threatening the public health, then said court is hereby authorized, empowered and directed to take proper proceedings in any court of competent jurisdiction of this state to take over, control, direct and operate said industry, employment, public utility or common carrier during such emergency."

An analysis of these statutes reveals that the defendant is restricted from doing certain things with the intention of violating the law, or in other words is restricted from doing those things prohibited by the law. But the defendant is not, by the law, compelled to operate its plant at a loss, nor is it prohibited from changing its business, nor from quitting the business, if it desires to do either of these things in good faith, not intending thereby to violate any provision of the act. The language of the act will bear this construction; it will uphold the validity of the act, and not deprive the defendant of any constitutional right that has been urged by it.

The law governing public service corporations is somewhat closely analogous to the law now under consideration. The United States supreme court has held that a railroad may be compelled by mandamus to perform those duties that are required by law.

(Northern Pacific Railroad v. Dustin, 142 U. S. 492;
Union Pacific R. R. Co. v. Hall et al., 91 U. S. 343;
Covington Stock-yards Co. v. Keith, 139 U. S. 128.)

In the City of Potwin Place v. Topeka Rly. Co., 51 Kan. 609, 33 Pac. 309 the supreme court of Kansas said:

67 "The performance of the duties which a street railway company owes to the public to operate its lines in accordance with the provisions of a city ordinance under which its road was constructed may be enforced by mandamus." (Syl. Par. 1.)

In the State, ex rel., v. D. C. M. & T. Rly. Co., 53 Kan. 377, 36 Pac. 747, the following language was used:

"The roadbed and superstructure of a railroad built under a charter obtained in accordance with the laws of this state are charged, not only in the hands of the original corporation, but of purchasers as well, with the burden of the company's charter obligations, and cannot be diverted from the purpose to which it was devoted, nor

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relieved from this burden without the consent of the state, duly expressed by the legislature or other competent authority." (Syl.)

In the City of Topeka v. Water Co., 58 Kan. 349, 49 Pac. 79, this court held that:

"Mandamus may be employed to compel a water company to extend its mains in a city, where under the contract between the city and the company it is the duty of the company to make such extension." (Syl. Par. 2.) (See, also, Railroad Co. v. Nyce, 61 Kan. 394, 407, 59 Pac. 1040.)

In the State, ex rel.. v. Postal Telegraph Co., 96 Kan. 298, 150 Pac. 594, this court said:

"Where a telegraph company maintained a telegraph station for a number of years at an average deficit of $134.33 per annum it should have applied to the public utilities commission to discontinue it, and it was unlawful to close the station and quit business thereat until such permission was granted." (Syl. Paragraph 3.)

Those were public utilities cases, in each of which a franchise had been granted either by the state or a municipal corporation, and a contract had been entered into, either express or implied, that the public utility would perform the service named. It is now well settled that the services performed by public service corporations
68 are affected with a public interest, but the time was when that principle was earnestly denied. These cases might lead to the conclusion that public service corporation is compelled to perform its duties even at a loss, but that principle is denied in a number of cases, one of which is Brooks-Scanlon Co. v. R. R. Comm., 251 U. S. 396, where the supreme court of the United States said:

"A common carrier cannot, under the fourteenth Amendment, be compelled by a State to continue operation of its railroad at a loss." (Syl. Par. 1.)

This rule is followed in Bullock v. R. R. Comm. of Florida, 254 U. S. 513. In the Brooks-Scanlon Co. case it was said that "A carrier cannot be compelled to carry on even a branch of business at a loss, much less the whole business of carriage." (p. 399.) A note on this subject is found in 11 A. L. R. 352, appended to a case, Lyon & Hoag v. Railroad Commission, 190 Pac. 795, where the supreme court of California held that the state had no power to compel the continued operation of a public utility at a loss. The authorities lead to this conclusion, that public utilities can be compelled to operate, but not at a loss. Control of public service corporations is justified by the fact that they are affected with a public interest. The defendant is operating a packing plant. It is not a public service corporation, but the legislature has declared that its business is affected with a public interest, and for that reason has assumed to exercise control over it. For a recital of the facts justifying that declaration, the State v. Howat, 109 Kan. 376, is referred to.

If the defendant is conducting a business that is affected with a public interest, it ought to be subject to legislative control the same as if it were conducting a water works system, an electric light plant, or a railroad. When the defendant's business became affected with a public interest, the public had the right to say something about the manner in which it should be conducted. The legislature has undertaken to do so, has provided for the regulation of that
69 business, and has placed certain prohibitions on the manner in which it shall be conducted; but the legislature has not said that the defendant cannot under any circumstances cease to operate its packing plant if it desires so to do. The permission that must be obtained from the industrial court by the defendant is not permission to do those things which it may rightfully do under the law, but is permission without which, the defendant, in doing other things, would be violating the law. In The State, ex rel., v. Howat, 109 Kan. 376, the court said:

"Limiting production and withdrawing from production are expressly permitted, for any purpose which does not contemplate circumvention of the law." (p. 414.)

The defendant argues that the compensation paid to its employes for services rendered is not affected with a public interest but does not argue that the defendant's business is not affected with a public interest. In response to the defendant's argument we begin by quoting from Munn v. Illinois, 94 U. S. 113, 125-136, where the supreme court of the United States said:

"This brings us to inquire as to the principles upon which this power of regulation rests, in order that we may determine what is within and what without its operative effect. Looking, then, to the common law, from whence came the right which the Constitution protects, we find that when private property is 'affected with a public interest, it ceases to be juris privati only.' This was said by Lord Chief Justice Hale more than two hundred years ago, in his treatise de portibus maris. 1 Harg. Law Tracts, 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be con-
70 trolled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."

This principle has been followed so many times in so many states that a review of the legislation and of the decisions arising thereunder would be a herculean and useless task. A resume of the decisions following this principle is found in Rose's notes 24 U. S. Law ed., pp. 519-542. But the question argued is not that the

business of the defendant is not affected with a public interest, but is that the wages of the defendant's employes is not affected with a public interest. The state may control the rates to be charged by those who are engaged in a business affected with a public interest. Wages is one of the largest factors that go to make up the expense of conducting a business and must be considered in determining what the rate shall be. In many instances wages cannot be increased unless rates or charges are increased, and in many instances rates or charges cannot be decreased unless wages are decreased. In all business enterprises affected with a public interest rates or charges and wages are so bound together that they cannot be separated. Rates cannot be completely controlled unless wages are controlled, and wages cannot be controlled unless charges are controlled.

The compensation paid to workingmen for their labor is the most fruitful cause of industrial unrest and of the conditions produced thereby. The state is not powerless to regulate the wages to be paid for labor in those enterprises without the continuance of which the people must suffer. Hours of labor have been the subject of legislative action, and a number of laws fixing hours of labor have been upheld. In Barbier v. Connolly, 113 U. S. 27, and Soon Hing v. Crowley, 113 U. S. 703, and ordinance of the City of San Francisco fixing the hours between which washings and ironing must be done in public laundries was upheld. In Holden v. Hardy, 169 U. S. 366 the supreme court approved a law of
71 the state of Utah fixing eight hours as the period of employment for men working in underground mines, smelters and other institutions for the reduction or refining of ores or metals. The principles that were followed in Holden v. Hardy was followed in Matter of Application of Martin, 157 Cal. 51, 57; The State v. Cantwell, 179 Mo. 245; The State v. Livingston Concrete etc. Mfg. Co., 34 Mont. 570; Ex Parte Boyce, 27 Nev. 299; Ex Parte Peter Kair, 28 Nev. 127; i-d 28 Nev. 425.

A law prohibiting those engaged in manufacturing or repairing to work their employes more than ten hours per day except in cases of emergency, or where necessity requires it, was upheld in The State v. Lumber Co., 102 Miss. 802, and 103 Miss. 263. The court of appeals of New York held that the legislature had power to enact a law making it unlawful for a railroad employe in charge of a block signal tower to be on duty more than eight hours in twenty-four, in People v. Erie Railroad Co., 198 N. Y. 369. A law fixing a day's work for conductors, gripmen and motormen on street railways at ten hours, to be performed within twelve consecutive hours was declared valid in an opinion to the governor by the supreme court of Rhode Island, in 24 R. I. 603.

Numerous laws fixing and regulating the hours of labor for women have been held valid under the police powers of the states.

Muller v. Oregon, 208 U. S. 412;
Riley v. Massachusetts, 232 U. S. 671;
Matter of Application, of Miller, 162 Cal. 687;

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Ritchie & Co. v. Wayman, 244 Ill. 509;
The People v. Eldering, 254 Ill. 579;
Commonwealth v. Hamilton Manufacturing Co., 120 Mass. 383;
Commonwealth v. Riley, 210 Mass. 387;
Witchey v. Bloom, 163 Mich. 419;
Wenham v. State, 65 Neb. 394;
People v. Charles Schweinler Press, 214 N. Y. 395;
Commonwealth v. Beatty, 15 Pa. Super. 5;
State v. Buchanan, 29 Wash. 602;
State v. Somerville, 67 Wash. 638;

72 In Muller v. Oregon, supra, one of the head notes reads:

"As healthy mothers are essential to vigorous offspring, the physical well-being of woman is an object of public interest. The regulation of her hours of labor falls within the police power of the State, and a statute directed exclusively to such regulation does not conflict with the due process or equal protection clauses of the Fourteenth Amendment."
(Syl. Par. 3.)

In Atkins v. Kansas, 191 U. S. 207, a law fixing eight hours as a day's work for all labourers employed by or on behalf of the State or any of its municipalities, was upheld. Similar laws have been upheld in The People v. City of Chicago, 256 Ill. 558;
Sweeten v. State, 122 Md. 634;
People ex rel. W. E. & C. Co. v. Metz, 193 N. Y. 148;
Byars v. State, 2 Okla. Cr. 481;
Ex Parte Steiner, 68 Ore. 218.

Laws establishing minimum wages for women have been passed in a number of states, and have been upheld by courts.
(The State v. Crowe, 130 Ark. 272;
Williams v. Evans, 139 Minn. 132;
Stettler v. O'Hara, 69 Ore. 519;
Simpson v. O'Hara, 70 Ore. 261;
Larsen v. Rice, 100 Washington 642.)

Appeals in Stettler v. O'Hara and Simpson v. O'Hara were affirmed by the United States supreme court, equally divided 243 U. S. 629. A very able opinion on this question is by the court of appeals of the District of Columbia. (The Children's Hospital v. Adkins, recently decided.) There an act of congress fixing a minimum wage for women and minors was held valid.

The laws fixing minimum wages and hours of labor for women are justified on moral and physical grounds; laws fixing wages for men may be justified on similar, although not the same, ground.

73 Sex is a proper basis for classification of the subjects of this kind of legislation, but it does not answer constitutional objections. The dangers to a man while working should

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be reduced to a minimum; the conditions under which he labors, so far as possible should be conductive to health and comfort. Intensive work of either mind or body, or both, should not be continued beyond his powers. A laboring man with a family, for honest work, should receive wages sufficient to enable him to feed, clothe and shelter his family, and educate his children. If the wages received by him are not sufficient to do these things, he becomes discontented, and the evil consequences that flow from such discontent may follow. The state should, it does, have power to protect laboring men to the same extent that it protects working women.

Before the law of rights of men and women ought to be equal; they are equal. If a man has an absolute right under all conditions to contract for the wages that he shall receive, a woman ought to and does have the same right. If the state under its police power can interfere with that right on the part of a woman it ought to be, and is, able to interfere with that right on the part of a man. The state is as much interested in the protection of the one as it is in the protection of the other. A statute may very properly be enacted for the protection of women, but that would not in any way weaken the constitutional right to object to it on any valid ground.

In Lochner v. N. Y., 198 U. S. 45, the supreme Court said: "Section 110 of the labor laws of the State of New York, providing that no employes shall be required or permitted to work in bakeries more than sixty hours, in a week, or ten hours a day, is not a legitimate exercise of the police power of the state, but an unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract, in relation to labor, and as such it is in conflict with, and void under, the Federal Constitution." (Syl. Par 4.)

That case seems not to have been overruled, but what
74 appears to this court to be a contrary rule was declared in Wilson v. New, 243 U. S. 332. In 1916 a general strike of railroad employes in the United States was threatened. To avoid that strike congress passed the Adamson Law which fixed eight hours as a day's work, and fixed the wages that should be paid at not less than the then standard per day and a pro rata wages for over time. That law was upheld in Wilson v. New, supra, where the court declared that congress had authority to pass the law under the commerce clause of the constitution. If under the commerce clause of the federal constitution congress can regulate wages and hours of labor of those working on railroads, the state under the police power should be able to regulate the wages and hours of labor of those working in a packing plant operating wholly within the state. The power of congress under the commerce clause of the constitution are no greater than the authority of the state under the police power. Congress is controlled by the fifth amendment to the constitution which provides that no person shall be deprived of life, liberty or property without due process of law, while the state is bound by the fourteenth amendment which provides that no state shall deprive any person of life, liberty or property without due process of law. Congress in its entire field of legislation must be

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dient to the fifth amendment the same as the states in their field of legislation must be obedient to the fourteenth amendment to the federal constitution. In Wilson v. New, supra, one basis for upholding the Adamson Law as expressed in the syllabus was as follows:

"In an emergency arising from a nation-wide dispute over wages between railroad companies and their train operatives, in which a general strike, commercial paralysis and grave loss and suffering threatening the country because the disputants are unable to agree, Congress has power to prescribe a standard of minimum wages, not confiscatory in its effects but obligatory on both parties, to be in force for a reasonable time, in order that the calamity may be averted and that opportunity may be afforded the contending parties to agree upon and substitute a standard of their own."

(Syl. Par. 4.)

Legislation to meet emergencies arising in the state similar to those arising in the nation ought to be upheld for reasons the same or similar to those given in Wilson v. New. The duty of the federal government to protect from suffering the people of the nation is no more binding than that of the government of the state to protect its people from suffering. If the Adamson law was compelled by an emergency, the Kansas industrial court law was likewise compelled by an emergency. The purpose of the latter law is to meet such emergencies as will prevent a suspension or interference with the operation of the several kinds of business named in that law. This purpose is revealed by the entire act. Section 9 of the act might bear a contrary interpretation, but in The State v. Howat, 109 Kan. 376, concerning section 9 this court said:

"Section 9 does not authorize a general revision of labor contracts. In congruity with other sections, it does no more than provide that contracts shall not thwart achievement of the public purposes of the statute. No contract may be modified except in an action or proceeding relating to a controversy. If, in dealing with the emergency created by a controversy, the court encounters a contract which would hamper the making of a necessary order, the contract may be treated as any other element of the situation. No contract is to be regarded as unfair, unjust, or unreasonable, that is not an impediment to settlement of a controversy, and orders respecting contracts of the obstructive character are merely ancillary to determination of the controversy. The power exercised in making such orders is the same power which takes entire charge of a mine and operates it during an emergency." (p. 42.)

A part of the subject that has just been discussed and inseparably connected with it is the defendant's contention that the law deprives employers and employes of the freedom of contract concerning wages. Practically every law regulating the conduct of men restricts their freedom of action, and practically every law regulating business affected with a public interest

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restricts the freedom of contract. Every law that has been passed regulating wages or the hours of labor has been a law restricting the freedom of contract. A large number of those have been upheld, and they must continue to be upheld if the state is to perform its governmental functions and prevent violence caused by controversies between employers and employes over these questions. If the state can make regulations for the government of a business affected with a public interest, it ought to be able to extend that regulation to the wages paid to the employes of the business. The flow of food supply from producer to consumer should not be stopped by conditions produced by industrial unrest arising out of wage problems. If that flow is threatened and the state under its police power can remove the danger, that should be done. That and that alone the Kansas industrial court law attempts to do.

The statute separates those engaged in the business of manufacturing or preparation of food products, manufacturing of clothing and wearing apparel, the mining and production of fuel, and transportation of food products, clothing and fuel, and public utilities, from those engaged in all other kinds of business within the state. The defendant says that this classification of the subject matter of legislation is arbitrary and unjust. This is an old field of legal debate; it has been before the courts, both state and federal, on a large number of occasions. The rules declared by the courts may be summarized as follows: the fourteenth amendment to the constitution of the United States does not require state statutes to operate indiscriminately; but does admit of the classification of the subject matter of legislation; the constitution does not prohibit special legislation merely as such; a state law may be limited in its operation as to persons but must be uniform for all in like circumstances within the sphere of operation of the statute; rigid
77 equality is not required; the legislature is permitted a wide discretion, but the classification must be reasonable and not arbitrary nor hostile. (4 Enc. U. S. Supreme Court Reports,—358-367; 6 R. C. L. 397, 403; 12 C. J. 1128-1138.) The successful operation of the four classes of business named, one of which includes packing houses, is necessary for the peace, comfort and welfare, and particularly of the health, of the people. These industries are subject to interruption on account of conditions now existing. Those engaged in these industries constantly work in the presence of danger. Long hours of continuous employment will render them less able to avoid those dangers because of the weariness that overtakes anyone who for a long period of time continuously works at any one thing. Constant employment at the same task for long hours day after day will render the worker both physically and mentally less able to perform his labor. Protection to the workman in these industries demands that his daily hours of labor be not so extended as to prematurely exhaust his powers.

The legislature had power to enact the industrial court law and to make it apply to the classes of business named therein, and to no other.

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The demurrer of the plaintiff to that part of the answer of the defendant presenting questions of law is sustained.

STIPULATED ABSTRACT OF TESTIMONY.

7. The said Commissioner, Hon. A. L. Noble, having duly qualified, the parties, between the 27th day of July, 1921 and the 25th day of August, 1921, introduced testimony before him, which was duly reported and a transcript thereof filed in the said Supreme Court of Kansas.

By stipulation of parties the substance of the evidence taken by the Commissioner so far as material to the questions arising on this writ of error, is agreed to be as follows:

(The documentary proof referred to by witnesses in the testimony is set out in the appendix hereto, containing the abstract of evidence before the Court of Industrial Relations and various exhibits and documents which are made a part hereof by reference.)

W. L. Huggins, presiding judge of the Court of Industrial Relations since its organization testified as follows:

"Asked what considerations induced the making of the schedule of wages shown in the petition, the witness answered (Vol. 1, p. 8): 'The character of the work, the skill required, the living costs in this community, as shown by the evidence, the wages paid in similar industries in this state, the effect of the various employments upon the health of the employe, the character of the business, its previous history as shown by the evidence, the amount of the wage scale as compared with the volume of the business done, the wages paid in 1920, the reduction made by the company in 1921, the comparison of the wages of 1920 with the wage scale as established by the company in its posted notice in January 1921. All these matters were considered, I think; that's all I can remember now.' Asked whether he considered the effect the wages fixed by the court would have upon the company's expense account, the witness said (Vol. 1, p. 39). 'We gave this consideration to that fact: that we had been going through a strenuous period as shown by the evidence; that the plant had paid for many years and made good money; been built up from a small plant to a big plant; statement of counsel during the trial that prospects were better now and it was hoped that the business would improve; the evidence of the volume of the work; volume of the business that was done and we made the order as stated in the opinion in view of the 60 day provision, 60 day trial provided by law. I will say also that we considered this: that a satisfied workman was more efficient than a dissatisfied workman and we hoped that the conditions we established gave a better volume of work and would result in the labor being more profitable to the company.' "

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Q. Did you take into consideration the actual losses that were then being sustained by the company?

A. Yes, sir; we considered that.

Q. Was the Court requested to examine into the facts of the company's financial condition?

80 A. Yes, I want to be absolutely frank about that and state it to the best of my ability. My recollection about that is: The Payrolls were referred to and offered in evidence, as I remember it, by the respondent, and it was stated, I think by myself, that they would be considered in evidence and that our accountant would be requested to go over them to such an extent as he thought necessary, and I think the attorney for the respondent consented that the accountant might determine, or might reduce to writing, and introduce in evidence, subject to any objection you might make. I think the attorney for the respondent also stated that the books of the company were kept here at Topeka and that they might be examined by the accountant subject to the provision that it should be considered confidential so far as possible in view of the necessities of the case. Now, soon after the close of that hearing, by the way—the accountant did make a trip down there—and started on this investigation, as I remember it, down to the plant and probably examined some of the books. But soon after the completion of this hearing, the accountant resigned, owing to certain changes, etc. occassioned by the recent legislature, and we were not able to get an accountant to take up the work as we hoped to be able to do at the time the hearing was in progress. However, in arriving at this present wage scale we considered practically the reduction in wages that the company had made by its posted notice. We did raise some of the lower paid men and part of that because of a statement made in open court, made by attorney for the respondent, that the respondent was willing that women workers should be paid upon the same wage scale with men for the same class of work. Then we did raise, I am speaking now of raising above the scale fixed by the company under the scale fixed by the contract of 1920, we

81 did raise some of the other lower paid workers, but we scaled down some of the higher paid workers, and in the final wage scale that we made we believed that we had not in any very serious, to any very serious extent, increased the wage as fixed by the company in its posted notice. We did put some burden upon the company, however, in regard to working conditions and providing for more suitable surroundings down there, but on the wage scale we believed at the time we fixed that scale that we had not seriously impaired the company by increasing to any great extent. We realized that we possibly had increased some, but we felt not sufficiently to cripple the company financially in any serious way, over and above the wage fixed by the company in its posted notice, and we felt, especially in view of the trial of the court, that satisfied workers would be more efficient than dissatisfied ones. And also in view of the sixty days' trial provided by the statute.

Q. These pay rolls to which I have referred having been offered in evidence were never examined by the court, were they?

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A. No, sir.
Q. Neither by you nor by any of the other members?
A. No, sir.
Q. I am speaking of the payrolls?
A. The Payrolls were not examined.
Q. And nothing was done by the court to examine that part of the testimony offered by the company?
A. No, the weekly payroll; no, sir.
Q. And you did not?
A. We were unable to do it; we had no accountant and couldn't do it.
Q. It was not done?
A. It was not done.
Q. And there was not made any examination of the company's financial condition by an accountant accompanied by a report submitted to the respondent with the privilege of cross-examination?
A. Nothing of that kind was done there and we expected then for Mr. Wolff's testimony as to losses as being true without any examination of those. We accepted that testimony.
Q. Now, we will conclude the matter, Judge Huggins; what I am getting at is not the question of loss sustained by the company but the question of the actual payroll and exhibited in the court for the purpose of enabling you to determine what the company actually was paying. I understand you to say that although those payrolls were introduced in evidence, they were never examined by the court nor any of its members nor any of its counsel?
A. That's true, but there was oral testimony on the payroll.
Q. No, you are departing from my question. I am asking you whether the payrolls were examined and asking you to state whether the accountans report was ever submitted to the court and by the court submitted to the company, as you have stated was to have been done. It was not done, was it?
A. No, sir; it was not done.
Q. That will conclude the examination. (Vol. 1, pp. 40 to 43*a*.)

J. A. McDermott, a member of the Court of Industrial Relations, testified as follows:

"The witness said on March 21, 1921, there was threatened a strike by the Amalgamated Meat Cutters and Butchers Union, of which the employes of this plant were a part. "Q." How did you know that? A. By general information that every other citizen got; it had reached the point where the strike had been voted and called and the federal government, the President of the United States, had called the packers and the representatives of these unions to meet with the Secretary of Labor and Commerce on Wednesday; I think the strike had been voted to be called a day or two later than that. On Thursday or Friday a temporary adjustment was made through the efforts of the two secretaries mentioned and while

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this national strike was impending, which would involve the Wolff Packing Company, we felt, knowing by general information the controversy that existed nationally, which was with reference to the overtime and the reduction of wages, that a temporary order made by this court would probably avert a strike at the Wolff Packing Company plant."

D. R. Hite, testified as follows:

I am counsel for the Charles Wolff Packing Company and was present at each day's hearing in the matter of May and others against the Charles Wolff Packing Company, in which the order of March 21st, 1921, and May 2nd, 1921, were made. There was no evidence introduced at the hearing which I did not hear. At this hearing I personally offered in evidence payrolls of the respondent company for a period beginning January 1st, 1921. These payrolls were admitted in evidence without objection. They were brought to the State House and consisted of a pile of papers weighing almost one hundred pounds. For safety they were put in the vault of the Supreme Court. The package in which these payrolls were brought to the court never was opened up by any person connected with the court of Industrial Relations. The attention of the court
84 was repeatedly called to the payrolls and they were not examined. At the close of the hearing, the payrolls were sent back to the plant in the same condition in which they were brought to the Court of Industrial Relations. At the hearing, at the suggestion of the presiding judge, that the accountant of the court would verify the statement made upon the witness stand with reference to losses and that a complete statement would be made by the accountant, and submitted to counsel for the respondent for cross-examination and inspection, the respondent did not introduce any evidence at the hearing or file a statement of its condition and the result of its operation as it would have done except for the understanding with the court.

Q. Now, you referred to payrolls here; you say you brought all of your payrolls up here; that is, up to the State House?

A. Yes, that is——

Q. What periods did they cover?

A. My remembrance is—I was looking for Sheehan—my remembrance is they covered a period from January 1st, 1921, down to the very time of the hearing.

Q. How many payrolls would that be?

A. Well, I will show you one of them or two of them and give you an idea of what they are; this is for two weeks.

Q. Do you pay weekly?

A. Yes, sir.

Q. So there would be as many payrolls as there were weeks covering the period you brought them up here?

A. Yes, sir; probably be twenty.

Q. Twenty payrolls?

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A. I am inclined to think it was at least a foot and a half high or two feet, and two feet long and about eighteen inches wide.

Q. Be the size of those payroll sheets and the height of whatever number there was?

A. It must have been for a year; I think it was for a year from the package.

Q. Then you think it was for a year instead of back to January?

A. I think it was. Some question raised about what payrolls we had.

Q. You had some sort of a condensed statement as to the amount of those payrolls, did you not, which you offered in evidence?

A. My impression is that we put in evidence the total amount of our plant payroll.

Q. Those that were down there?

A. Yes, for the period of one year. I am not certain, it is a mere effort of memory; I am not certain whether the memorandum of the total covers more or less than the payrolls that were brought up here for inspection.

Q. Well, you had some evidence put in here that would show what the contents of those payrolls were?

A. No, sir; we had nothing of that kind. These payrolls gave the name of each employee, the number of hours he worked, the rate per hour, and gave the total of his pay for that particular week. Recaptiulation of that showing the amount actually paid in some instances from the evidence made to employees and that information is furnished. This court could have ascertained the hours of work of these various workmen.

Q. You had here and presented in evidence the abstract or condensed statement of the aggregate amounts of those payrolls?

A. I think that's so.

Q. The court also had before it the wage schedule under which those payrolls were made, didn't it?

A. In part; it was not complete from the fact that as certain of the employees would leave their occupation—which is a frequent occurrence—at the plant others would be employed in their places at the current rate of wages prevailing in the city at the time, and the memorandum that was given to the court was the application of the rates fixed by the bulletin of January 17th, 1921, and——

Q. Up to the time of the expiration of the contract, the wage schedule would obtain?

A. You mean the one for 1920?

Q. Yes.

A. Manifestly.

Q. Assuming then that the court took your statement as to the aggregate amount of money paid and the payrolls, the schedule upon which the payment was made, in what way was your company prejudiced in the consideration of the court?

A. In this way: This court had no evidence before it whatever of what would be the result of its application of the order with reference to overtime.

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Q. Pardon me right there; no one could have any evidence at that time, could they, as to the effect of a proposed schedule of wages for overtime?

A. Well, Mr. McClain, that was the purpose of offering the pay-roll. It was for the express purpose of showing what would be the result of an order that we pay time and a half for overtime and that evidence that was offered, it was agreed that should be considered and it never was, and if it had been considered, it would have been just as plain to this court as it is to anybody else who knows the facts what the result would have been.

Q. I confess my lack of knowing the details of business matters of that kind, but didn't you make a proposition here in open court?

A. I did.

Q. In what way now does the order that has been made, what different effect, does it have, or would it have, from your proposition?

A. The suggestion that I made to this court and which I was authorized by my client to make, was that we believed we could
87 re-arrange our business upon a forty-eight hour basic week with time and a half for overtime after forty-eight hours. I believe the members of the court who heard my statement will bear me out when I say that I strenuously objected to any order of basic day or basic week at all. That it was wrong in theory and expensive in practice, but that if the court would make the order that we would have a forty-eight hour basic week, with time and one-half for overtime after forty-eight hours in a week, that I thought that my client would re-arrange his business to meet such an order as to overtime. Instead of that the court made an order that workmen should have time and a half after nine hours, if they worked two days in a week, and time and a half after eight hours if they worked two days in a week. That's the effect of the order, and Judge Huggins is a fair as a man possibly can be. He frankly states that the court didn't adopt my proposition and since they didn't adopt it as made, I felt quite at liberty to disregard it myself.

Q. Wasn't it substantially adopted in effect?

A. It was not.

Q. In what respect?

A. In the respect I have indicated and as indicated in the testimony of Judge Huggins; the order speaks for itself.

Q. Was there evidence in this hearing and before the court as to the effect of a change in the overtime proposition?

A. If your question is intended to elicit the information as to what the effect upon the respondent would be in its payroll, I will say there was evidence offered and introduced and never examined by the court.

Q. Well, was there any oral evidence?

A. There was not.

Q. Were any statements made by counsel?

88 A. Yes, made the same general statement along the line of the, if I may be permitted to say, the *phychological* and economic theories of time and a half for overtime, but further than

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hat there was absolutely no information that I know of before this ourt that would enable the court to determine what it would cost his company in dollars and cents to put into effect the order with eference to overtime, and I hope I may be pardoned for saying hat I think that Judge Huggins himself was greatly surprised when told him the effect of the order upon the Wolff Packing Company's xpenses, and I feel certain that if Judge Huggins was to do this er again that he would have his accountant furnish him with ose figures before he reached his conclusions.

Q. Well, I am asking now for the information of the court of e commissioner and of myself as well, is the excessive cost, so r as the pay is concerned, complained of, due to a great extent to is overtime provision?

A. To both.

Q. What ratio, if you happen to know, in a general way?

A. There is no factor that I can give you, Mr. McClain, that can e applied. It is a question of experience. We have the payrolls howing exactly what it costs, not any guess work about it. We now what the proportion of the cost is to the total expense in the lant payroll.

Q. On the overtime schedule that was obtaining then?

A. We didn't have any overtime schedule obtaining then.

Q. Upon the overtime as existing then?

A You will understand, Mr. McClain, when I speak of overtime e have in mind the payment of some extra sum.

Q. You have that set up from past experience?

A. No, this is the way it is obtained; we would pay workmen say sixty cents an hour; he gets sixty cents an hour whether 9 he works six or ten hours. Now it is entirely clear that if we pay a man sixty cents an hour and he works nine hours nore than two days a week that for the first hour he works after nine hours he gets ninety cents. It is simply a matter — arithmetic. Take the number of hours each workman works and apply this overtime that is comprised in this order. That's the way we are ble to figure it with mathematical certainly.

Q. With that statement then your claim and allegation here with eference to what this order would, the amount this order would, ncrease your burden upon the wage question only is based upon our knowledge of how much overtime this order would make rom your past experience.

A. Why, of course, and we have applied it to the week following he order itself, so as not to have any past experience but actual xperience.

Q. You tried one week?

A. Certainly.

Q. But didn't test any one period?

A. Our business runs so uniformly, Mr. McClain, that we didn't go into the realm of speculation by taking a few weeks. We reduced everything to what we call a "hog killing" basis, and we can determine with certainty as to what effect a change in wages will be.

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Q. During this period did you readjust your business?
A. Not at all.
Q. You didn't readjust your business?
A. As a matter of fact we didn't actually readjust our business at all. We have proceeded as before, but we have set up a reserve as natural business prudence would require, covering the amount,
90 approximately, that in the event our protest on this order should not prevail that these employes should not suffer, and we set up that as a matter of business prudence, but the way we get at the effect of this order is to take the number of hours in each of the occupations covered by the order and ascertain from our actual experience we pay, and ascertain from the number of hours and the rates fixed by the order what we would have paid. Now you have it." (Tr. Pages 122-123.)

* * * * * * *

Question, by Commissioner Noble: I understand your company was on the overtime basis for at least a year, up to January, 1921?

Answer, by Mr. Hite: That is not exactly correct, Your Honor. It was from May, 1920, to December, 1920."

"Thereupon the transcript of the evidence taken before the Court of Industrial Relations in the matter of the complaint of May and others was offered by the plaintiff and received in evidence, over the objections of the defendants.

A summary and abstract containing the substance of the transcript of evidence introduced at the hearing upon the complaint of May and others is made part of this stipulation under the heading 'Abstract of evidence before the Court of Industrial Relations' and attached hereto."

91 Charles Wolff, Junior, testified as follows:

I am the President and General Manager of the defendant, (Tr. 134). I have been connected with the business for twenty years and have been President and General Manager about nine years. The paid in capital stock of the defendant is $600,000.00. Its plant is at Topeka, Kansas; it has a weekly capacity of about 4,500 hogs and 300 cattle. Doing a wholesale business in packing house products, both edible and unedible. Our products are sold throughout the United States, we also do some export business. I do not know exactly what the percentage of our sales in the State of Kansas would be as compared with the whole amount of the business but of course, it would be a small percentage. (Tr. 135.) Taking the business as a whole the larger per cent would be in other states and countries. (The killing and dressing of livestock is under government supervision.) We have eight government inspectors. Their duties in a general way are to inspect all the edible products as well as to inspect the animals at the time they are killed for disease. It is a part of their duties to inspect the premises where the killing and dressing takes place. (Tr. 136.) It is very necessary that livestock should be handled promptly following receipt of it, if that is not done there

very great danger of loss of the stock on account of diseases spreading among them. Another thing there is deterioration of the product (Tr. 137) on account of holding them over if not killed promptly. Also a loss on account of shrinkage. They must be put into the refrigerator immediately at the time they are killed so that between the operation of killing and the operation of refrigerator is one continuous operation. On account of the size of our plant it is impossible to keep one gang of men on the killing continually. We have control over the offerings of live stock to the plant for sale only to a certain degree but there are a great many times when we receive a great many more than we really need, at those times, of course, it is necessary to handle them immediately. It is not practicable at all to work shifts of workmen *of* work women in eight hour shifts, (Tr. 138) that is on account of the volume of our business. The company makes strenuous efforts at all times to complete the work in the various departments within eight hours. The workmen in certain specified occupations, particularly in the "killing gang" do not work continuously at a single occupation. With a good efficient gang we should kill from 250 to 350 hogs per hour under our system. At that rate we could only employ our killing gang about two hours per day, that is on a basis of 3,000 a week. When the killing has to stop because of want of capacity the men are put in the cutting room or in the loading gang or in such other work as we find it advisable. (Tr. 139.) There are times in the operation of the plant when it is necessary that the killing gang should work longer than eight hours a day to complete the operations, due to the absolute necessity of taking care of perishable products promptly. There are other times when that can be done within eight hours and some times less.

The capacity of the plant is approximately 4,500 hogs and 300 cattle a week. (Tr. 140.) Certain of the products have to be cured and the curing process takes from twenty-five to sixty days. The plant sells considerable fresh and also cures considerable meat. The plant has facilities for killing the capacity number but has no facilities for storage. Have to use outside storage if necessary to take care of the production. (Tr. 141.)

The company's fiscal year ends October 30th. The total sales of the company for the year ending October 30th, 1920 were in round numbers seven million and one-half. The employes' pay is divided into two different payrolls, the "plant" payroll and the "office" payroll. The total plant payroll, in round numbers, for the year ending October 30, 1920 was $444,000.00. The result of the company's business for the year 1918 was that it sustained a loss. The same was true in 1919. (Tr. 142.) The result of the company's operation for the year ending October 30, 1920 was that it also sustained a loss. The company closes its books for the purpose of ascertaining profit and loss once at the end of six months and at the end of the year. The approximate loss of the company for the period from October 30, 1919 to October 30, 1920 was over $100,000.00.

I think I am acquainted with the value of packing houses generally. I am acquainted with the value of this packing house owned

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by the Charles Wolff Packing Co. (Tr. 143). The property was appraised by the American Appraisal Co. in 1919. I am acquainted with the value of the various machinery and equipment that go to make up a packing plant. From my knowledge of the packing house business and the values that I have testified to, a fair and reasonable value of the Charles Wolff Packing plant in the City of Topeka is,, or would be in round numbers, one million dollars up-to-date. (Tr. 144.) That value has not fluctuated materially since January 1st, 1921. That valuation does take into consideration the deterioration from reconstruction value. The reconstruction value would be much higher than that. I presume about 50%, that is it would cost approximately one and one-half millions to reproduce. In my experience $6,000.00 a month or around $75,000.00 a year would be a fair deterioration on the plant considering its valuation.

I am acquainted with the price or sum that is charged for the use of money in this vicinity and what this packing plant has to pay for the use of money it is 8% at the present time.

I have had charge of this plant for a good many years. Aside from one difficulty with our employes in 1918 we have had
93 no serious difficulty. The plant has never been stopped or shut up or quit for a day. There were no threats made that I recall that they would shut the plant up. (Tr. 146.)

We continued operations during the strike period, which lasted for about, as I recall now, four or five weeks. We were handicapped on account of about one hundred and seventy-five employes out on the strike. The balance of the employes, one hundred and twenty-five or one hundred and fifty, remained on the job and continued operations but not to full capacity. That is the only interruption in the company's operation in my experience. In January of this year, 1921, there was no threat on the part of any of the employes or group of employes, to strike. (Tr. 147.) We have had no complaint from any employes at any time with reference to the matters of wages. I recall the circumstances of the employes, or some of them, bringing me a contract that they wanted signed. I told them that Mr. D. R. Hite was acting in the capacity of counsel for our company and I was sure he would be glad to see them and discuss the matter. They said they did not care to discuss it with the company's counsel and left the paper. I do not recall any further meeting.

On January 17th the company posted a bulletin reducing the wages (Tr. 148). I heard no complaint from the employes with reference to their cutting wages aside from what we heard in the Industrial Court. I do not recall a single employe that quit the service of the company on the ground of not getting paid enough. There has been absolutely no difficulty as to the company being able to go on with its business upon the payment of the wages that it is now paying. We have more applicants than jobs and did have this morning. That has been practically the situation since the beginning of 1921. (Tr. 149.) We have had absolutely no difficulty whatever in getting all the employes that we require for the operation of the plant at the wages offered by the plant. About thirty men inside the dock looking for positions this morning. (Tr. 149.)

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I think I am acquainted with the prevailing or going rate of wages
r common labor in the various industries in the City of Topeka and
s so acquainted from January 1st to May 1st, 1921. It was 25¢
30¢. About 50% of the labor in our plant is common labor.
We sell all our products in a competitive market. (Tr. 150.)
e have no means of controlling the price that our products sell
r as we sell in the open market. We have plenty of competition in
the business in which this company is engaged.

I have been engaged in this business for over twenty years
and am acquainted with the general conditions throughout
e country, or that part of the country where this company offers
s products for sale. I know the market conditions in the various
rts of the country. (Tr. 151) I know the conditions under which
e packing houses are working and offering their products for
le in those parts of the country.
The effect upon the company's ability to meet the conditions
ovided by the rate of wages in this order would be that the busi-
ss would not stand the burden of the increase.
"Mr. McClain: I move that that be stricken out for the reason
at it is a conclusion of the witness; the business not having been
erated on the basis of those rates.
Mr. Hite: My suggestion, Mr. Commissioner, is this: We have
n expert packer upon the witness stand; we have a man who testi-
d he is acquainted with conditions; with conditions he has to
et in the competitive market, in which these products are sold.
e understands the conditions which other packers confront, and
om that information he is here testifying as an expert that this
siness won't stand for these rates.
By Commissioner Noble: I suppose it involves a conclusion as to
e expense of operating the business.
Mr. Hite: I will supplement by showing the effect that it would
ve in figures.
Mr. McClain: Here is my view upon this: I don't see how this
an can make this conclusion unless he had the data from which
e computations were made. It is an observation; (Tr. 152) he
esn't know a single essential of the thing that is necessary to
rk that out, unless he has gone there or had it furnished him;
at data is the very gist of the matter before the court."
By Commissioner Noble: Sustained."

Cross-examination:

The company's capital stock is $600,000.00. Up to January 1919
e had paid in capital stock of $358,300.00, during January of that
ar the capital stock was increased to $600,000.00. I would not
member whether we then had undivided profits in the sum of
52,000.00 and something. (Tr. 155.) We are a Kansas cor-
ration and make an annual report to the Secretary of State in-
cluding the calendar year December 31st, a part of that re-
port is a full statement of the assets and liabilities at the
close of the year. I could not tell offhand whether Exhibit

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"V" to Exhibits A. B. covering 1914 to 1920, are true and correct copies of the financial statement of our report during those years. Our increased capital stock from $358,000.00 to $600,000.00 was made up from earnings or represented new paid in capital stock. (Tr. 156.) No undivided profits, new paid in capital stock. Undivided profits do not enter into that, it was new stock for which they paid par. In 1919 we issued the difference between $358,000.00 and $600,000.00.

"Q. And what became of the undivided profits that appeared in 1919 and are not shown in 1920, in the sum of—I should say, 1918 and 1919, in the sum of $178,876?

A. That necessarily undivided profits was reduced; when you have losses; that's the result of loss for operation of the plant.

Q. What was your loss in 1918? You testified as to a loss in 1919 and 1920, but didn't testify to a loss in 1918?

A. I would have to refer to the records to give that to you." (Tr. 157.)

We had a trial balance for our stockholders at their annual meeting showing our financial standing for the current year. We always have a statement for reference at each annual meeting. I think we have a trial balance or financial statement showing our financial standing December 31, 1918. Our fiscal year at that time ended in December. I think we have the same for October 1919 and for 1920. (Tr. 158.) I also have the original statement by the audit company in 1919.

We make tax returns to the assessor for the purposes of taxation that includes our real estate, our improvements and our personal property, and also our merchant stock. We should have copies of those returns for 1918, 1919 and 1920. (Tr. 159.)

I stated that the property was worth one million dollars January 1st, 1921; that is plant and equipment and real estate.

"Q. And you turned in your taxable property in 1920 at $280,000, didn't you? (Tr. 160.)

Mr. Hite: We object to that as not calling for any material testimony.

Commissioner Noble: Overruled.

Q. And that value of the plant was consistently practically the same for the years 1918, 1919, and 1920; you made no material change in the valuation of your plant, did you, as you *re* returned it to the assessor?

96 A. Well, as I said, I couldn't tell you without—I couldn't quote from recollection on that.

Q. Can you recall whether you made any material change in the value that you returned those years?

A. No, I wouldn't say without referring to the papers because I don't recollect.

Q. And the total value of your property as turned in for taxation in 1920 was $590,000, wasn't it?

A. I don't recall what it was; I would have to refer to the records to say what it was.

Q. You have your tax receipts showing what it was, don't you?

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A. Yes, I think we should ascertain from the records what it amounted to if necessary.

Q. And the average valuation of your real estate for the last seven years has been $245,000, or thereabouts, or (Tr. 161) do you know?

A. I couldn't tell you without referring to the records.

Q. And for the taxable property, you turned in for taxation on account of your plant, equipment, merchandise, for the last seven years has been $469,000?

A. You are asking me a question?

Q. Yes.

A. I said I couldn't say as to the figures turned in without referring to the records because I don't recall them."

I am unable to state whether these various figures are true or these values are true. (Tr. 162.) The products of our plant are sold all over the United States and some exported. I can state the per cent of stock killed in Kansas that was sold in Kansas only by referring to the records. As to control over live stock at our plant, I said we could control it to a certain extent. Most of our hogs are shipped in by the various shippers and they are weighed in at our plant. (Tr. 163.) We have our own stockyards and feeding yards, and in addition receive wagon loads over which we have no control whatever. Wagon receipts will run from 175 to 400 per day. We have feed and stockyards for them and if we could not take care of them could ship to Kansas City but it would entail a loss. A shipper shipping to Topeka gets more for his stuff than if he shipped to Kansas City because of the prices we pay. (Tr. 164.) The market is posted in the Topeka papers every day.

In addition to the packing house business we also handle some ice, and make all the by-products that go with the packing house business. We run a cold storage plant for our own use. (Tr. 165.)

Aside from the selling of our products to the various parts of the United States we have no business relations elsewhere than in Topeka. The company sells on the open market. The Charles Wolff Packing Co. is a subsidiarw company of the Allied Packers, incorporated. They own all of the stock, I think there are just a few odd shares outstanding. (Tr. 166.) That has been true since we sold the plant in October, 1919. The sale was after the increase in capital stock. (Tr. 167.) There were losses in the plant under my management prior to the sale of the stock to the Allied Packers. The Allied Packers have plants in Buffalo, New York, Detroit, Wheeling, W. Va., Richmond, Macon, Ga., and they have several plants in Canada.

"By Mr. McClain: This loss in 1919, was this loss that you speak of occasioned at the Topeka plant or was it a loss that was spread over the plants by the operation of the Allied Packers?

A. Well, there was a loss in the other plants as well as ours.

Q. What I want to know, Mr. Wolf, is this: Was this showing of loss that you will furnish the court, was that the loss of the Topeka plant proper or was this its part of the loss of the Allied Packers?

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A. Loss of the Topeka plant proper.

Q. Loss in its own operations?

A. Yes sir. Of course, we spend our proportionate share of the interest; for instance, money invested in the plant; have to have money to operate anyhow, just the same as tho we borrowed elsewhere." (Tr. 168.)

The Wolff Packing Co. has no bond indebtedness nor outstanding indebtedness in any large amount. I will ascertain whether we had any money owing banks December 31, 1920.

We begin setting aside a depreciation from the beginning of the business as far as from 1886 to the present time. I am not sure as to whether we took any account of it in our statements to the State of Kansas.

"Q. You made a reserve for depreciation in 1919 of $3,783.00.

A. That's what shows on that statement.

Q. And in 1920 your report shows reserve for depreciation of $47,937.00.

A. This item of $3,007.00 must be a special. That couldn't possibly de depreciation for a year. That would be impossible." (Tr. 169.)

Our gross business for last year, 1920, was about seven and a half million dollars. The total plant payroll for the year ending October 30, 1920, was $444,418.40, the total office payroll for the same period was $98,012.34.

Sometimes the Allied Packers furnish a working capital to all its subsidiary companies and sometimes part of their requirements are taken care of at the various local plants through the local banks. The interest that I speak of then is the charge back for that portion against our plant for the money loaned. (Tr. 172.) Their interest charges would be bond interest, our proportionate share of the bonds of the Allied Packers. I think it is prorated among the plants forming the Allied Packers upon the valuations placed upon the several properties. Do not think it is based on the volume of business done. (Tr. 173.) Cannot tell you the basis of
98 value that we are paying interest on and making an accounting to the Allied Packers, the figures are all assembled by our central office in Chicago, part at the office in Chicago and part at Buffalo, N. Y. I presume as president of the company I could get the means of ascertaining the valuation upon which we make this settlement. The debit memorandum covering the amount of interest charged to our plant does not show the values upon the various plants, it shows the interest charged. The rate of interest on the bonds is 6%. On money we are borrowing locally we are paying 8%. (Tr. 174.) The money that we borrow of the Allied Packers they figure in accordance with the going rate and time on commercial paper and our proportion of their debt necessarily. The bonds of the Allied Packers are sold on the market, bear 6% and are payable semi-annually but we carry two interest accounts, one for the furnished working capital by the Allied Packers, as well as the bond interest charge. I do not know what rate of interest we pay to the Allied Packers for our working capital, whatever the

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ing rate is. (Tr. 175.) They assemble that information. ey figure on that basis and we pay our proportion as well as the lance of the plants do. It is ordinarily commercial paper evi- ced by notes. When we want working capital we do not execute note to the Allied Packers it is simply a matter of accounting; ey forward us the necessary funds. We wire them and tell them at to forward. If occasion requires I draw on them.

Q. Don't you pay call money rates on short time loans?

A. Just a matter of accounting.

Q. Do you pay on a daily balance; do you pay interest on a daily lance, or in specific amount?

A. They take into account the amount of money advanced and length of time, and then charge the various plants accordingly.

Q. And what rate do they charge you?

A. The rate changes, as I said before, it's according to (Tr. 176) at the going rate is.

Q. They fix that rate?

A. Yes sir.

Q. How often do you remit to them?

A. Don't remit; just make an accounting between the plants.

Q. How often do you have the charges and credits settled?

A. Well, they are made whenever advances are made; debit made.

Q. I know, but isn't there certain periods of the year when there a statement of debits and credits on this proposition forwarded n?

A. Well, we have and get a statement at the end of the month.

Q. Average monthly, wouldn't they?

A. Average monthly.

Q. How often is there a statement made to you for demand, or atever it is they do, on bond interest?

A. You mean how often?

Q. Yes.

A. Each month.

Q. It is changed monthly too?

A. Yes.

Q. Do the two statements come together, or separate?

A. Well, they have a separate memorandum debit or credit memorandum, covering each." (Tr. 177.)

In addition to that we borrow money from local banks on Allied Packers' paper for cash needed to do business. That in addition to other funds available; that varies according to the me of the year, during the heavy packing season we have to bor- w more. Most of the products we sell we deposit through the arious local banks. In the case of an inter-plant shipment, or in se we are shipping from this plant to the Detroit plant, it is a atter of accounting. (Tr. 178.)

We have had no dividends; profits on business done is simply an ter-plant accounting. There is no exchange of funds between the llied Packers and the Wolff Packing Company except when we quire funds to carry on the business. Sometimes when we have

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a surplus we send some surplus to their treasurer located at Buffalo at the present time. There is no stated time when that is done.

"Q. And am I to understand that your remittance of any surplus funds, other than interest to the Allied Packers, has not taken place in the last year or two?

A. No. They have advanced us funds from time to time as we required them." (Tr. 179.)

We pay them back as a matter of accounting. What we have here over and above our requirements we send to them. We have books showing receipts from and remittances to the Allied Packers from our company.

"Q. That would be available to the Accountant for the Court?

A. We have them."

We cannot operate our plant on shifts on account of the volume of business. (Tr. 180.)

We charge off depreciation in round numbers of $6,000.00 per month. I cannot say when we started to do it. Of course, the Allied Packers have a different system of handling depreciation than we do at ours; we charge ours off every six months, I believe, and they charge depreciation each month. (Tr. 182.) The $6,000.00 a month that we are charging off under the direction of the Allied Packers is based on the valuation of the property furnished as the result of an appraisal by the American Appraisal Co. I give directions as to the valuation and amount charged off from the Allied Packers. I do not have anything to do with it outside of doing what they state but if I thought it was unreasonable and showed wherein it was unreasonable it could be changed. The Board of Directors of the Wolff Packing Company does not fix this depreciation. (Tr. 183.)

I said that we had no serious difficulties with our employes since 1918. I do not recall any time since the strike in 1918 that we had any threatened strike. In 1918 for four or five weeks we had a strike. There has been dissatisfaction that produced this complaint to the Industrial Court, prior to that time I do not think they were dissatisfied. We never had any complaint aside from the trouble we had. (Tr. 184.) Between 1918 and this complaint with the Industrial Court we undoubtedly talked over conditions with our employes several times; that is not any trouble. I mean we talked with the men individually and with union representatives; we have to do that from time to time, always have done that. We
100 had provision to pay for overtime at our plant in the contract of May 10, 1920, up to the time it terminated. I think we had it prior to that time and possibly under the 1919 contract.

"Q. Now, on March 29th, showing your Exhibit A. D., at that date you were having trouble with your employes upon the question of wages, weren't you?

A. Well, at that time we had a conference with the employes with some of the employees, with a view of agreeing on some rate.

Q. What did you mean there when this language was used by your superintendent: 'In this manner we hope to avoid (Tr. 185)

such difficulties as came up today, which causes the employe-s and employer a loss.'

A. I don't know, that matter was without my authorization by Mr. Patterson.

Q. He was superintendent?

A. I don't know what he meant by that.

Q. You were appraised of it at the time?

A. No, sir.

Q. You don't know what it refers to?

A. No, sir.

Mr. McClain: I offer that as part of the cross-examination of this witness. Exhibit "A. D."

Mr. Hite: I object to that as hearsay; the witness has never seen it; never authorized it.

Mr. McClain: He identified the signature as his superintendent's.

Mr. Hite: I see no necessity here why it should be admitted in evidence, because somebody else said something.

Commissioner Noble: Was that exhibit before the Court of Industrial Relations?

Mr. McClain: Yes.

Commissioner Noble: Overruled." (Tr. 186.)

I stated our loss during our fiscal year of 1920 ending October 30, was more than $100,000.00. We have statements made up by our accounting department showing the items that constitute that loss. Those statements are in our office. I think it would be a pretty difficult question to answer what part of the $100,000.00 is due to labor and wage questions. Labor represents about 40% to 50% of the total expense of the plant so you can get at some sort of a rough estimate. I presume the data from which I know this is available to this court. Our statements would show the amount of the loss. (Tr. 187.)

The contract that we were operating under with our employe-s prior to January, 1921, is Exhibit "A". I do not recall that we gave our employe-s notice. Exhibit "B" is a paper prepared by some of our employe-s. I do not recall posting any notice of the termination of the contract Exhibit "A" (Tr. 191). Exhibit "B" is the proposed contract which they requested. It is a draft of a notice or instrument proposed for the signature of the Wolff Packing Co. As a result of our not renewing the contract of May 10, 1920, our employe-s took the matter up with the Industrial Court. Sometime about January 1st there had been presented to us this request for a formal contract. I do not know that you would call it a controversy between ourselves and our employe-s. (Tr. 192.) We were requested to sign that new contract. We refused to sign it. Along about the middle of January we posted the notice by which we instigated another wage all our own as a result of our conference between our superintendent, Mr. Sheehan, and myself. The employe-s had nothing whatever to do with it. Those are the rates, we decided upon. I do not think the employe-s were consulted; that was done before anything had been done in the Industrial Court. (Tr. 193.)

Redirect examination of Mr. Chas. Wolff, Jr.:

Assuming that it will hereafter appear that certain charges to the expenses and expenditures of the company consist of what are denominated "Central Office Expenses" such contributions to the Charles Wolff Packing Company are decidedly advantageous in several ways in the operating end of the business as well as the selling end. In explanation I will say in the operating end we derive the benefit of the travelling supervisor of the Allied Packers as to the most profitable manner to make the various cuts of meat as well as the best manner in handling the various departments of the plant. And we gain a great many advantages in the sale of packing house products. For instance we secure a great deal of export business on a very favorable basis that I don't think we would be able to attain otherwise. This also applies to the sales of products throughout the United States.

The proposed contract tendered to us by our employees in January, 1921 requested the company to signify what it would do relative to the contract on or before January 22, 1921. (Tr. 197.) I advised them at the time it was handed to me that I thought it would be proper for them to have a conference with Mr. Hite, our counsel, with the view of discussing various demands contained in their proposal. This they refused. At the time the proceeding was begun in the Court of Industrial Relations the time within which the company was to respond to this demand had not expired. (Tr. 198.)

This administrative expense that I have just testified to includes a great many expenses that we would have in connection with the local office if we were an independent company. That charge includes some money paid to some employees of this plant, it also includes our proportionate share of the Chicago advertising expenses which, of course, includes the cost of maintenance of the office and our proportionate share of their incidental expenses in connection with the office as well as our proportionate share of the executive of the Allied Packers. I do not know exactly whether that is arrived at monthly or not, the amount is fixed by the executive office and we are notified of our proportionate share with the other plants. (Tr. 199.) That is the item which we carry on our books as expense of Central Office administration. We are charged monthly as a matter of accounting with our proportionate share. As I stated before, the item includes part of our expenses which we would otherwise have, salaries, accounting expenses and the like. Our travelling salesmen's expenses do not enter into this. (Tr. 200.) They are paid by our company direct. I cannot give you the details that go to make up that item. It does include travelling expenses of the executive and other persons acting in a super-advisory capacity, and also includes a part of the salaries of different persons connected with the Wolff Packing Co. as well as the Allied Packers. I cannot tell you exactly what proportion of this administrative expense goes to local men in our office and what part of it is a general spread of the cost and expenses of the executive administration of the Allied Packers. (Tr. 201.) I think the accountant can do that; it would b

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102 approximate. The method of accounting and the personnel has been changed from time to time. We have added personnel to our local office because we have increased the volume. (Tr. 202.) The personnel has been increased both as to labor and cost. If you want to know exactly it can be ascertained by reference to the records. As to the authority which we have with reference to the conduct of the business it depends almost entirely upon the local management to handle the local business of the packing plant. Of course, we keep in touch. (Tr. 203.) In certain things of importance involving policies of the business we receive instructions from time to time from the Allied Packers but do not necessarily follow these instructions, if we remonstrate and show them where they are wrong they will change their instructions; otherwise we follow them.

Exhibit "A. G.," the notice of a change in wages was posted several days prior to the 17th of January, 1921.

"Q. Now, one or two more questions, then I am through. In your former testimony, Mr. Wolff, before the Court of Industrial Relations, you were asked to give approximately your working capital? This question was asked you: 'Q. Well, give it to us approximately and then do the other if you will,' and your answer was: 'A. Well, I would say it would amount to approximately $400,000, or $500,000.00 to over $1,000,000. The peak of the load would be over a million.' 'Q. That is in the fall, as you say?' 'A. No, the contrary. I said the minimum was in the fall.' 'Q. Oh, I misunderstood you. Does the capital stock of $600,000 represent fairly the value of this plant. A. Fair value? Q. Yes. A. I would say that it was a fair value. By that question let me understand you—you mean the plant and equipment exclusive of the inventory?' Now, Mr. Wolff, do you remember of answering that way?

A. If it is in there, I probably answered that way.

Q. Calling witness's attention to page 585 of transcript heretofore referred to.

A. I presume the particular part that you refer to here is the valuation of the plant as I gave it here?

By Mr. McClain:

Q. Yes.

A. Well, the true valuation as brought up to date was based on the American Appraisal Company's valuation, is around (Tr. 207) is around one million dollars as I stated yesterday.

Q. But that is what you testified there, isn't it?

A. Yes sir.

Q. Nothing said there about the American Appraisal Company.

A. Nothing whatever.

Q. This was your testimony somewhere along the early part of March this year, you recall that?

A. Well, that seems to be there; if that's what I said in there, it is what I said, I presume." (Tr. 208.)

I do not think I instructed Mr. Sheel[illegible]n, our superintendent, to attempt to compromise the situation in January, 1921. I think he

did have a meeting with the employees on the new wages and t
taking away of the eight-hour day and the guarantee per we
(Tr. 209.) I do not remember the exact day, I think we undou
edly had several meetings during the latter part of December becau
it was nearing the expiration of our contract of May 10, 1920, as
the exact day Mr. Sheehan would recall better than I.

The Allied Packers is a Delaware corporation and our company
a subsidiary company to them. In other words they are
103 holding company. (Tr. 210.) They have various plan
throughout the United States that I mentioned yesterda
In some other cases they bought the plant, the property itself a
operate themselves so they are more than a holding company. T
Allied Packers did not issue bonds covering the amount of the pu
chase of the stock of our company at the time of the purcha
They issued bonds shortly after they were incorporated and th
was sometime before they purchased our stock. Their bonds ha
no relation to the purchase price of the stock of our company. O
company was charged up with interest on the bonds of the Alli
Packers but you see the Allied Packers' executive office furnishes
funds from time to time as required by the business, we derive the
funds from the result of the bonds. (Tr. 211.) We are charged
the Allied Packers not only with interest on the current money th
they furnish for operating expenses but in addition are charg
with our proportionate share of the interest on their bonded indebte
ness. As I understand it, our share of the bonded interest is deriv
on the basis of the valuation of the property. (Tr. 212.) We a
charged our proportionate share and I think they arrive at it on
fair valuation.

"By Mr. Noble: Of course, I think, Mr. Hite, that ought to
elucidated in some way.

By Mr. Hite: I agree with you fully, your Honor, that the i
terest on the money borrowed, whether it appears in the form
bonds or otherwise, by the Allied Packers, as charged against th
plant, must appear as one of the items and I expect to give you
Honor full information on that subject."

I have a qualifying share as a director in the Allied Packe
They have not paid any dividends since they acquired the stock
our Company. (Tr. 213). They purchased practically all our sto
in the fall of 1919. The inventory was taken October 4, 1919. Th
paid up capital stock was then $600,000.00. They paid arou
$130.00 per share for the capital stock when they purchased
Since the purchase the capacity of the plant has been increase
1918 was the first year our company sustained a loss. The incre
in capacity of the plant was made during January or February, 192

"Q. I understood your counsel to state that the Allied Packe
controlled all the selling of the products of your plant, is that rig
Mr. Hite?

By Mr. Hite:

A. Yes, in the sense that they aid in the disposition of it.

Q. Do all the proceeds of the sales go into the hands of the Allied Packers?

A. We control directly all the salesmen, for instance, throughout Kansas and other points.

Q. His question, Mr. Wolff, was as to whether the Wolff Packing Company sold the Allied Packers, and the Allied Packers sold at a profit and received the money; that's the question you are asked to answer, as to whether the Wolf Packing Company receives the proceeds of its sales?

A. Yes, we receive the proceeds from the majority of the sales in case of shipments of products to other plants. Why, it is just merely a matter of accounting; we receive credit for the amount of the shipment, in some cases export shipments occur."

104 Direct examination of E. M. WALDELE:

I am office manager of the Charles Wolff Packing Company and have been since December 16, 1920. My duties are to see that the work is handled properly, the office accounting department. I have charge of all the accounts and record books of the corporation, It is part of my duty to make up from the records periodic statements in the form of trial balances and balance sheets. The paper handed me, Exhibit "A. H." is our balance sheet for April 30, 1921. (Tr. 216) Exhibit "A. I." is our income and expense statement for the five weeks ending April 30, 1921. Exhibit "A. J." is a cumulative statement of income and expenses from October 30, 1920 to April 30, 1921. The figures on Exhibit A. H. were taken from the records of the Charles Wolff Packing Co. and those figures correctly reflect the state of accounts referred to on the sheet. Exhibit A. I. purports to be an income and expense statement for the five weeks ending April 30, 1921 (Tr. 217) and the figures appealing on that sheet were taken from the records under my control and correctly state the state of the records. What I was asked with reference to the other exhibits is true of Exhibit A. J. I have caused a computation to be made with reference to the order of the Court of Industrial Relations dated May 2nd to the payrolls of the Charles Wolff Packing Co. for a period ending April 30, 1921 and the subsequent week ending May 7, 1921. Our office force applied the rate fixed by the Court of Industrial Relations on these two payrolls to ascertain what the difference in money would be over what we paid. (Tr. 218) The payroll which is handed me contains the wages actually paid by the company to its employees covered by the payroll for that week in the column under the head of "Total amount earned." The column under the head of "deductions" contains the figures I made to show the application of the order of the Court of Industrial Relations May 2, 1921 to the several employees and occupations upon the payroll. In that column is listed what we would have to pay under the order. (Paper offered in evidence). The payroll for the week ending May 7, 1921 contains the wages actually paid by The Charles Wolff Packing Co. in the column marked "Total amount earned". In the column under the head of

"deductions" is found the figures for the purpose of seeing what would have been paid by the company if the order of May 2, 1921 had been observed. (Respondent offers payroll in evidence as Exhibit A. L.)

I cannot say positively whether the Wolff Packing plant was running to capacity during the week ending April 30, 1921 but I do not believe it was. (Tr. 220.) I believe our work was heavier during the week of May 7, 1921 than during April 30th.

I have caused to be made statements of the records of the company as to the killing of live stock for the various months of this year, (1921). The paper handed to me is that memorandum. It reduces all killing to a hog killing basis in order to figure expenses. (Tr. 221).

105 In the handling of the accounts of the company the work is done on a weekly basis. Our trial balance are taken for periods of weeks instead of days. We keep a statement showing the profits and losses of the departments operated by the company. The plant is divided into departments and on all products going from one department to another there is a money transaction on it just the same as if it was sold. Each department stands its proportion of the expense. I have some of those departmental record reports with me. The paper handed me is our departmental for the five weeks ending April 30, 1921. (Tr. 222). The column marked "loss" and the column marked "gain" on the first page of the paper shows the loss or gain in each department as it shows in the body of the departmental. The work "beef" followed by $5,643.55 means a gain in the beef department of that amount. The item "veal" net gain $1,246.31 means the same thing. The item "Curing loss" $28,489.88 means a loss in the curing department of that amount for the five weeks' period. It would be a loss on the product during the month.

We take a new inventory at the beginning of the month and one at the end of the month. The communication attached to this Exhibit A. M. is a copy of a communication made to the Central Office. (Tr. 223). Made at the time and purports to reflect a summarization of what is in this department. I have no previous departmental statements. There are others covering other periods of time. I have one for January, February and March, one for each period. The departmental system was partially in effect when I came here but they never had gotten far enough along with it to know just how they stood. (Tr. 224). The figures in the left-hand column of Exhibit A. L. show our purchases and our expenses and our opening inventory. The first figure, $399,651.81 means the total of our inventory at the beginning of that period. The subdivision of purchases during the period means live stock purchased during the period and the amounts shown opposite the various items show the money actually paid by the company for live stock, cattle, hogs, calves.

The item "intercompany deal by plant" means that in case of any purchase of any shipment we receive from other plants we show on there in detail what plant we receive them from. If a plant shows

ship us some produce or product of their plant they bill us for that just like they were purchased from somebody else. That plant gets credit on their books for the amount of that invoice, (Tr. 225) and those matters of interplant accounts are adjusted back and forth from time to time, or will be.

The item "plant payroll" in the amount of $32,692.26 means the total of our plant payroll for that period for the five weeks ending April 30, 1921. The item "selling" $4,336.93 means the payroll of our salesmen working out of our office. The item "office" $6,796.85 takes in all the clerks, heads of departments in the office and the accounting department. The item "supplies" $7,619.29 means the purchase of supplies during that period. If we buy a load of paper or other material it is charged to some account, (Tr. 226) generally to the store room or it may be charged direct to a department if that department is the only one that uses it, then as that is drawn off it is considered as part of the expenses of the period during which it is drawn off. The item "packages" $9,442.27 means the amount of packages, such as boxes, barrels, coopering or an-thing of that kind used during the month. The item "power, heat and light" is an account that we have for the power that we use and the fuel and our electric current and our water. The item $575.12 relates to miscellaneous repairs to the plant and is carried under the heading "repairs" and does not contain anything that is carried to construction account. (Tr. 227). The item "factory expense" $249.72 is a miscellaneous expense items that cannot be applied against any particular department. The item of "re-icing" $500.00 is an item set up each month to cover the cost of re-icing cars in transit, cars we ship out that have to be re-iced two or three times in transit and we are charged up with that by the railroads. The item "travelling expense of salesmen" $3,678.02 is in addition to what we have up here in selling expenses. The item "commission and brokerage" means commission paid to any brokers who have to handle our products on a commission basis. The item of $1,116.37 for outside drayage refers to drayage paid in different towns we ship to for delivering the products to the customers; we keep a separate account for that. The item of "telephone and telegraph" $1,315.55 covers telephone and telegraph during that period. The item of "central office administration" in the amount of $5,-19.01 is furnished us by the Central Office. I do not know how they arrive at that; there is a memorandum debit slip sent to us so that they should have credit for that charge. I follow the directions given me from the Central Office in that respect and know none of the details of that. The item "central office payroll" $2,219.22 contains some additional salaries paid direct from the Central Office to some of the employees of the Wolff Packing plant. I do not know how that is apportioned. (Tr. 229). I do not know whether the central office has a general payroll covering some employees in the various plants for their dual operations. I get that from the Chicago office. The item of "bonded interest" $1,935.30 is the amount apportioned to the Charles Wolff Packing Company for the period

covered by this paper, Exhibit A. I. I do not know what facto
used by the central office in making their apportionment.

"Q. If you desire, Mr. McClain and Mr. Noble, if you desir
have that information particularly, I can get it in the form
statement from the general accountant of the company of
treasurer, do you want it? It will not be in the form of anyth
more than an affidavit, if that will do. I don't want to bring t
people out here for that purpose.

By Mr. McClain: Yes, we would like to have it." (Tr. 230.)

This total of $821,819.08 is the total of all the items beginn
with inventory at the beginning of this period. On the other
the item "sales during the period" in the amount of $367,23
means sales to customers other than our own plant. In this
ticular period I see an item "Wheeling" $6,664.71 that m
shipped to our Wheeling plant. We charged them market pr
the same as to customers. The item "Detroit" $8,88
107 means the Parker-Webb Company at Detroit, one of the c
panies subsidiary to the Allied Packers. "Richmond" $
061.16 is one of the subsidiary companies, that's what I mean
intercompany. (Tr. 231.) The invoices to these companies ar
the market on the day the articles are shipped. Under "de
tions—freight outbound" $19,614.37 we mean freight and exp
that we prepay. That is supposed to be covered in the price at wh
the goods were sold. The word "allowances" means the allowa
made to various customers during the month for meat shortage
anything of that kind. The item "returned goods" is the prod
returned to the plant shipped out to customers. The item "c
signments P. & L." means loss, the sum of all these, the sale
customers and the interplant sales, losses, the deductions grow
out of bad payments, and freight allowances, returned goods,
the item of profit and loss, represents the net proceeds of the s
during that period and amounts to $411,336.70. (Tr. 232.)
next item is inventory at the end of the period, April 30, 1921.
taking inventory at the beginning of the period we take the ma
price of the product. That system is followed in taking the
ventory at the end of the period. Under the heading "miscellane
earning (detailed)" the item of $124.50 of interest earned is inte
on our daily balances in the bank. The item of "live stock sa
$90.83 is the profit on live stock that we bought here that we ca
kill and which we re-sell, in this case we made a profit. The i
"rental income $52.00 is from some residences owned by the c
pany. The item "White Eagle Oil adjustment" $5,163.83, that
a judgment against them. The figures under the loss for the per
$10,565.26 is the actual loss. (Tr. 233.) During the period t
was an actual loss sustained and we did not get enough by that
to pay the cost of producing the amount that we sold. The i
"add accumulated loss for previous period" $144,794.22 is
cumulated loss from October 30, 1920 to March 26, 1921, to th
added the loss for this particular period and we arrive at the

loss the company has sustained for the six months ending April 30, 1921, or the sum of $155,359.48. The item in red ink "current period" on Exhibit A. H. and showing an amount of $155,359.48 is the amount to which I have referred on Exhibit A. I. On this balance sheet, as of April 30, 1921, under the column headed "previous period" profit and loss, there is an item of $144,794.22, that is the amount corresponding to the statement in the Exhibit A. I. that was referred to and under the column "Increase-decrease" I find an item $10,565.26 which reflects the amount of the losses for the five weeks period ending April 31, 1921. Under the item "current account" previous fiscal period is the amount $2,042,550.30 that is the balance on our current account which is our interplant account and includes remittances sent here by Allied Packers and includes debits to other plants. Since the column "previous period current account" contains the amount of $2,041,026.50 that indicates that during the period of five weeks ending April 30, 1921 we increased the amount owed to the interplant matters $1,523.80. The item current fiscal year $28,805.09 (Tr. 235) is our fiscal year current account to date for the six months ending April 30,
108 1921. With reference to the loan account which contains nothing to its debit although the previous period contained an item of $259,253.32. I do not remember right now but we carried a loan account covering all money transferred back and forth and right at that time we threw it into the current account and it disappeared from the loan account to re-appear in the current account on Exhibit A. H.

Our assets are divided into total current assets and total other assets. Current assets takes in all accounts receivable, inventories and anything receivable of that kind (Tr. 236) then there is a total of $703,738.74 composed of merchandise and various articles of supplies and cash and accounts receivable and bills receivable and the like. In the column "total other assets" and the item "land" is listed at $62,300.00. I do not know how that amount was arrived at, it was on the books when I came here. I have been informed that there was an appraisal made. The item of buildings and yards, $980,213.39 is the amount that was on the books as a debit to capital assets account when I came. The item of machinery and equipment $637,885.23 was also an appraisal set up on the books when I came. We had very few additions during that time. The item "liability reserve for depreciation" $450,969.25 is the reserve set up. The figures set up each month covering depreciation of building, equipment. (Tr. 237.) The "total of fixed assets" $1,722,220.22, the reserve for depreciation is besides this amount to arrive at the present value as carried upon the books of the company as its capital asset. Our depreciation reserve for the previous period to March 26, 1921 is $422,999.25 and an item of $7,970.00 is the reserve set up for the period of five weeks ending April 30, 1921. In setting up that reserve the company was furnished the schedule, before I came here, showing the amount of percentage of depreciation to be charged off on buildings and equipment. (Tr. 238.) It varies: some equipment will depreciate faster than others and this was set up on that

basis. The paper which I am now handed headed "Charles Wolff Packing Company," is a correct statement from the records of the company of the losses or gains of the company arrived at in the same manner as I have described for the various periods that are stated here. Refreshing my recollection from the papers before me the Wolff Packing Company from its operations for the five weeks ending December 4, 1920, lost $44,021.27, for the four weeks ending January 1st, 1921, it lost 41,942.74 and for the four weeks ending January 29, 1921, a gain of $12,439.87, for the four weeks ending February 21, 1921 a loss of $37,495.69 and for the four weeks ending March 26, 1921, a loss of $11,568.22 (Tr. 239) for the five weeks ending April 30, 1921 a loss of $4,094.10; in that amount the bond interest and central office have not been taken into consideration. The total of $126,682.75 of loss is before deducting the central office charges and the item of $126,682.75 is the total of the loss before adding the central office charges to the losses for the period covered. During that period the central office expenses in the amount of $18,613.17 was charged (Tr. 240) and bond interest in the amount of $10,063.56, and the application of those two items as charges
109 against the total of the losses makes losses of $155,359.48, the amount reflected in our balance sheet of April 30, 1921. What appears to be a discrepancy in the income and expense statement Exhibit A. J. where the central office administration expense item is $19,896.32, and central office payroll is $9,847.22, making together something over $29,000 and in another place it says central office expenses are only $18,613.17, is explained by the central office payroll item being absorbed in the loss or gain before deducting the central office charges.

Cross-examination:

These computations which I have identified and which have been offered in evidence were prepared by me from books of the Wolff Packing Co. (Tr. 241.) Those books are at the company's office and the data is available for checking them back. I cannot say whether the schedule of depreciation which has been sent us was there or not, it was sent before I came; I got my information from the office. I just apply this rule; have figure set up each week and use that amount. I cannot say whether the basis used is a general basis forwarded from the Allied Packers for the guide of all the subsidiaries, the parties who were in charge before I came set up this depreciation. (Tr. 242.) I think it is a uniform scale used by the Allied Packers, that is my understanding. I get a memorandum giving directions as to the items of administrative expense and interest when I make these charges from the Allied Packers. (Tr. 243.)

In answer to questions by the Commissioner Mr. Waldele stated "there would be very little variation in our payroll between the expenses of running the business during two weeks as shown in our statements and a like period of two weeks going back to January 17th. The matter of losses and bad accounts are reflected by certain reserves set up each month to take care of that account, our records

will show whether that reserve is included or not. There has been no charging off by the Wolff Company of accounts of goods shipped to other plants by the Allied Packers. There has been no loss on that account. Our statements show large losses in some months and in others some profit, it may be the cause of that difference is the volume of business done in those periods, I cannot say offhand, from observation in making the accounts, what is the cause of the difference, current conditions have a great deal to do with it, we might have a stock of goods on hand which would go up during the month and the profit would be reflected in the report for that month."

Recross-examination:

When we consign to the allied packers we take credit at the market price where all prices are posted. We have a Kansas City market and a Chicago Market. Possibly wherever the shipment would be in the territory usually would be the market quotation, and that would apply. (Tr. 273.) If we were shipping to
110 Macon, Ga. I could not tell you what market governs there, that is not a matter of posted market, it is based on market conditions all over the country. I could not give you how we arrive at the market price, that is in the selling department and is handled by the selling department and would be covered by the market quotations we get every day from Kansas City and Chicago, couldn't say whether it is some bureau or just general.

"By Mr. Hite: My understanding is that the sales department fixes the price at the market for that day; get a market quotation daily from Kansas City and Chicago, and these notices to these plants reflect the market price."

We do not have a trial balance for each five weeks' period, it runs in four and five week periods. We have them back to October 1920, they are available. There is a sales manager for both companies located here. With reference to these charges that are given me for goods consigned to other plants belonging to the Allied Packers, I could not say just whether the sales manager here gives me the item of charge or whether I get it from somewhere else, I do not follow the selling end of it. I think they base it on the market quotation. Our men here will fight just as hard for a price on a shipment to another plant as if it was an outsider, because what the other plants earn does not concern us in the least. I have charge of the accounting department here and that department receives these figures or slips for accounting from the sales department. (Tr. 275.)

(Exhibit A. N. being the payroll introduced in evidence.)
Respondent rests.

111 Volume II.

Recross-examination of E. M. Waldele:

In our income and expense statement A-1, we use the term "allowance." In that sheet it is $1,312.42, (Tr. 4). It consists of allowances made to customers during the month for small claims. On Exhibit A-J, item there it is $2,849.50, that is the same for six months. The total amount of sales shown by Exhibit A-I is $432,693.60 and by A-J $2,282,736.40. The sales for the period shown by A-J being for six months are nearly five times the sales of the five week period as shown by Exhibit A-I (Tr. 5). Quotations to our customers would depend upon the various basis of sales, that is, the method of shipments. Inter-company shipments are handled the same way and under the same rules and regu*al*tions as outside customers. Practically all inter-plant shipments are shipped freight collect. We have a sales manager at plant (Tr. 6). I could not say whether he is paid partially by the inter-allied companies. When we sell to another plant we get an order which may be from one of the plants or from the central office. I could not say as to that. We have six to eight hundred orders a day. (Tr. 7.) When the invoice arises in response to an order it is charged direct to the plant to which we shipped, all in one account. We have a current account with the allied packers and keep it under one general head of "Current account of the Allied Packers." I cannot say that it is a charge or credit as the case may be. If we make a shipment to Wheeling, West Virginia, or Detroit, or Chicago, we charge the same account. (Tr. 8.) I do not know whether we deal with the central office of the Allied Packers, with respect to that current account. We reconcile our account with the central office. The item of allowance for the Six months' period as shown by Exhibit A-J is $28,490.56 and for the five weeks' period shown by A-I is $1,312.42. The allowance for the six months' period is over twenty-one times more than the allowance for the five weeks' period. I account for the difference in this way, that along the first part of this year and the last part of last year our allowances were exceedingly heavy, our salesmen would go out and make allowances where they should not have made them. Of course when we have got to back our salesmen, we have to stand for it. We have cut them down materially in the last six months. (Tr. 9.) The general practice in the business is to prepay our charges to all small customers; only the larger customers that we ask payment of freight from.

Witness's attention was called to his testimony as to the remittances to the inter-plant account, and he was asked whether he meant those remittances were for those shipments that he had just testified to and testified that they were just an advance of money.

112 There is no remittance on account of these inter-company shipments. It shows up on the balance sheet either as a liability or an asset. For example in Exhibit A-H, it would show under

the head of total or net current account reflected in this fiscal period and current fiscal year. (Tr. 12.) Exhibit A-H covers a five weeks' period ending April 30, 1921. On Exhibit A-I there is no way to show it. (Tr. 11.) Exhibit A-I has no way to show it on there. It shows in your sales here on the income and expense statement shipments to Wheeling, shipments to Detroit, shipments to Richmond, shipments to Chicago, that would be the net gross sales but that item is not reflected anywhere else. The reserve for depreciation for $450,969.25 referred to in Exhibit A-H is upon the valuation of the property. I could not say whether it is based upon the actual cost of the property or upon the appraised valuation. The figures were set up before I came there. I do not know whether by the office manager who preceded me or by someone previous to him. The figures were here and he turned them over to me, and said they were the depreciation figures to use. (Tr. 12.) The basis of arriving at this was not stated to me. I may be able to find the figures of the office manager who was here previous to me, I would not say that. I will look up to see if I can find upon what basis, whether it was the appraised valuation of the American Appraisal Company. It was upon appraisal reproductive value.

By Mr. McLain: Upon statement of counsel it is admitted that the depreciation reserve is calculated upon the reproductive value as ascertained by the American Appraisal Company.

By Mr. Hite: Yes sir, that is the fact. (Tr. 18.)

This reserve is to replace the physical plant. The $7,970.00 that was set up for depreciation reserve for the period of five weeks ending April 30, 1922 was arrived at from the figures left there by the man in charge when I came here. They were set up by taking the total value and figuring a certain percentage for different buildings according to the construction and different machinery according to the kind of machinery it is, that is, figured for a period of a year, divided by fifty-two which is our weekly charge off. We took the value of the property to arrive at the depreciation. (Tr. 14.) The factor varies from four to twenty-five per cent according to the building, a wooden building might not last as long as a concrete building. I haven't a set list of factors I use in determining that. I was given the amount of charge off for each week and it was turned over by the party before me. It generally runs for six months or a year's period before any change is made. I work on the figures left there when I came here. I figure the percentage on the value of the property. I could not tell you who established these factors. I do not know whether they came from the Allied Packing Company's central office or whether they are kept and maintained at the Wolff Packing Company office. (Tr. 15.) I haven't got the rates on which depreciations were figured. I wouldn't say whether they are where I can have access to them. I have only charged off for these five weeks which was there when I came. There may be working papers there, I could find out. I set up this depreciation for these five weeks by looking at the previous month's charge off. (Tr. 16.) That is the way I got this $7,970.00.

113 I do not know where the percentage came from, I will ascertain and let you know for there is nothing in the books, files, or papers from the central office upon which that was originally based. (Tr. 17).

By Mr. McClain: Now on page 239 of the transcript, the first question at the top of the page there, and the subsequent ones. The question was: "Now, Mr. Waldele, please examine the paper which I now hand you and under the column headed Charles Wolff Packing Company and state whether that is a correct statement from the records of the company in that particular column of the losses or gains of the company in — arrived at in the same manner that you have described for the various periods that are stated here?" That's the question that was asked, for the benefit of the Accountant. What exhibit was that?

By Mr. Hite: That wasn't an exhibit; it was a computation sent to me at intervals of all the plants of the Allied packers, and that compilation is made up by Ernst & Ernst from their monthly audit, and in that the Charles Wolff Packing Company is in a column by itself with all the plants; monthly results of operations and these figures that Mr. Waldele gives you were for convenience taken from that, but they also appear for your Accountant's benefit on the income and expenditures account that you probably have seen; they are reflected in each one of those for the Charles Wolff Packing Company. Isn't that correct, Mr. Waldele?

By Mr. Waldele: Yes sir.

By Mr. McClain: This then you say was a summary of the reflected profit and loss statement?

By Mr. Hite:

A. Yes sir, that's exactly right.

Q. For all plants?

A. All the plants, yes.

Q. And you asked him from that paper with reference to this plant?

A. That's it.

There have been small additions to the book value of the plant, something put in. There has been nothing by any new appraisal or anything of that kind, we have carried the same book value since I have been there. Any appreciation in the book value goes right in against the building. Just increase the building value here on the balance sheet. (Tr. 19.) That is not the total fixed assets under the heading of "buildings and yards" that the difference shown would be in our books, and that is the only way it would show. The item of $8,030.39 was an adjustment on the Ernst & Ernst report, which Mr. Atkinson and I went into amounting to $22,000.00 and some odd dollars and cents. You will find also in that month addition of machinery and equipment of $12,000.00. When this entry was made it was originally charged to building account instead of to the machinery and equipment account and then was reversed; makes one debit and one credit. That would

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not affect the profit in any way. There has been no charge off figuring our rate of depreciation with these additions, (Tr. 20.) I know what we do about our charge off and it does not affect
114 our profit and loss at all. It does not affect anything only the building. If I am to suppose that we had a reproduction value, or book value of so much, and in six months from that time we increased the reproduction value of the property, that would be a profit, provided we done anything like that. That would not affect the surplus. I could not say whether Exhibit A-H includes the depreciation of the plant in the current account arrived at by the appraisement of December 1, 1919. The only way that could be ascertained would be by the Ernst & Ernst report. The current account is the account kept between the Wolff Packing Company and the Allied Packers. Remittances from The Allied Packers do not have a direct reference to any particular shipment, they are just carried on open account. (Tr. 22.)

By Mr. Hite: Responsive to request made of Charles Wolff, Jr., as shown on page 169 of the transcript is to be taken as a fact. At the dates indicated by the request it is probable that the Wolff Packing Company had no bills payable outstanding at all, as the methods adopted for borrowing money at the banks is as follows: Notes are made by the Allied Packers, Incorporated, payable for example, to the Bank of Topeka. The proceeds of the discount of such notes is carried to the credit on the books of the bank of the Charles Wolff Packing Company and such proceeds then credited by memorandum upon the books of the Charles Wolff Packing Company to what is designated in the testimony of the witness Waldele as the current account. At maturity these notes are paid by check directly from the Allied Packers to the bank holding the note. And generally speaking, and except in rare instances for some immediate emergency, the Charles Wolff Packing Company has no outstanding bills payable. (Tr. 23.)

115 C. W. SHEEHAN, Superintendent of the Respondent Company, having charge of production, was called as a witness by the defendant. The substance of Mr. Sheehan's testimony is as follows:

I have been in the service of the Company since May, 1920, and have had charge of the plant employees, with power to employ and discharge them. No difficulty has been or was experienced in securing employees in sufficient numbers necessary in the operation of the plant, at the wages offered, and there has been no interruption of operation a single day, except such as were caused by the breaking down of machinery, holidays, and the like; that the only strike threats I knew of was sometime in July, 1920, when the President of the Local Union called on me and demanded that the wages of a certain employee be reduced. After they called the second time, I held a conference with the grievance committee of the Union, and as it turned out the man that they wanted discharged, or his pay reduced, was a member of the grievance committee, and when the witness explained the demand for his discharge, the grievance com-

mittee got into a wrangle, and upon my suggesting that they should get together they never came back, and the wages of the employee in question were not reduced, nor was he discharged, but is still working at the plant; that several times particular grievances have been taken up with the witness, but no threatened serious labor disturbances, going to shut up the plant.

Q. What is the fact about there being an over-supply, or having been an over-supply offered to you during that period, (since the First of January)?

A. There has not up to date.

That from my investigation at the time the trial in the Industrial Court was going on, I concluded the rates of common labor
116 were from 35¢ to 42½¢, but that I did not keep up with the prevailing rates in Topeka. I have been in the Packing House business since 1903. I was foreman for Swift and Company, and with the United States Government as a meat inspector I have been in close touch with the Packing House business during all of that time.

The attention of the witness was called to the Industrial Court's order, prescribing the wages of two men engaged in "Shaving Shoulders" at 50¢ and 72½¢ per hour, and he testified it was the duty of "Shoulder Shavers" to remove the portions of the hair on the hog not entirely removed by the de-hairing machines; these men used knives with which they removed the hair, so as to make the hogs fit for inspection. That the work of the two men was precisely the same. He stated that his explanation of the ruling of the Industrial Court was that one of the men who actually was engaged as a "Shoulder Shaver" was one of the "Cattle killing gang," part of the time getting 75¢ an hour, whenever the foreman directed him to do that particular job; the other "Shoulder Shaver" was employed in the Cutting Department, and his rate happened to be 50¢; that as a matter of fact, the work of "Shoulder Shavers" is exactly the same, one man having as much work and as much responsibility as the other, and it would be impracticable to pay one man 50¢ and the other 72½¢, and the result would be that the man getting 50¢ would object to working along side a man getting 72½¢ "different wage, same work." Concerning "Cut out bruises" Mr. Sheehan said that a man with a knife stood beside the Government inspector, who directs the cutting out of bruises on hogs, and cuts out bruises as directed by the inspector; that it was very light work, only requiring intelligence and a sharp knife.

Mr. Sheehan said that since the Company stopped paying
117 time and a half for overtime, its operation has been just as efficient as when it paid time and a half for overtime.

"With the exception of — I have had, or rather I have noticed some trouble where they were lagging behind with their work and as was explained in the recent case the stopping of the chain and the whole operation, but I do not believe there has been as much of it here of late as there has been."

As to the actual effect of paying overtime after eight hours in the Charles Wolff Packing Company, Mr. Sheehan said, "The real ef-

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fect I found down there was that it was a burden to the company for the reason that a number of employees would shirk on the job in order to get that overtime."

That because of its limited refrigerating capacity the plant cannot be operated with two eight-hour shifts. "We have been unable to get a gang to go in there after the eight hours and take up the duties of the other men and work two, four or six hours whatever it might be, but we really haven't got capacity to work two eight-hour shifts;" yet, the operation from killing, the refrigerating must be continued; that any stoppage resulted in loss both in time and caused deterioration of the meat. The operations beginning at the hog chain consist in first suspending the live hog, head down, on a trolley, traveling on a rail. After the hog is killed, it travels 40 feet through the scalding water by means of a traveling conveyor, the hog is carried into and through a mechanical scraper, through which hot water is constantly running. This removes most of the hair, but the hog passes through a mechanical polisher, where still more of the hair is taken off. The hog is then gambreled, hung head down on a conveyor operated by an endless chain, geared at a speed to handle 300 hogs per hour. The hog is then singed; and as it passes along, is shaved by two men, one removing the hair
118 behind the neck, and from the eyes, and the other shaving the shoulders. It passes then to re-shavers, to remove any remaining hair. Other men cut down the head, exposing the glands for examination by the Government Inspector, who examines for hair and disease. If the inspector finds any hair on the hog, the whole operation is stopped, arresting the work of the entire killing gang. After passing the first inspector, the viscera is removed and inspected, the kidneys taken out, the carcass weighed and split. A man with a sharp knife stands by the inspector, and at his direction, cuts out bruises. The Leaf Lard is then taken out, and any remaining lard removed by scrapping. The carcass is then again washed and upon tables ready for that purpose, cut into sides, shoulders, hams, etc., and immediately goes into the refrigerator. As the gang doing this work could not be kept at it for eight hours every day because of the limited refrigerating capacity, after the operations just described, the men in the killing gang are put at other jobs, are paid at their rate on the killing gang, although employed in occupations requiring less skill.

Q. Now, let me ask you, these men couldn't make the living that they make now unless they did that?

A. No, sir.

Q. Couldn't keep these skillfull men except by giving them enough to pay them at the highest rate?

A. No, those skilled men I don't believe would be satisfied, Mr. Hite.

Q. So as a matter of fact, you don't occupy, or these men are not engaged in these high priced occupations all the time?

A. No, sir.

Q. But they get high wages just the same?

A. Yes, sir.

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Q. What does the order provide about that, dividing their time?
A. Nothing said about that, it simply says an occupation.
119 Q. Generally speaking, Mr. Sheehan, is there any, would it be practicable for this company to employ these men in these occupations that are covered by this order continuously for eight hours?
A. No, sir.
Q. It couldn't possibly be done, could it?
A. No, sir.
Q. To accentuate that, you have described here these men who shave shoulders; what do you pay your shoulder shavers?
A. I have been away, Mr. Hite, and I don't remember just who is on those jobs.
Q. You know Frank Davies, do you?
A. Yes, sir.
Q. What does he do?
A. At the present time he is clerk in one of the departments.
Q. Who were the shoulder shavers when you went away?
A. I really don't remember who was on that particular job, some of those jobs have got to be changed from day to day, Mr. Hite. Davies may have been in there for a week or for a day, I don't know.
Q. You are acquainted with H. E. Dennis?
A. Yes, sir.
Q. He is put on here as hog and cattle splitter?
A. Yes, sir.
Q. Now, is he kept in that occupation all the time?
A. No, not entirely.
Q. Would it be practicable to have this man work at this occupation eight hours every day for the six days?
A. No, sir.
Q. Nevertheless, you pay this man 75¢ an hour for whatever he is doing?
120 A. Yes, sir.
Q. What else does he do, Mr. Sheehan?
A. He skins hams part of the time.
Q. That don't mean singeing hams, does it?
A. No, sir; sometimes he trims hams, skins hams and bones hams.
Q. The week ending May 7th May was ham trimmer?
A. Maybe he was; trimming bellies last time.
Q. Mr. Sheehan, common labor is fixed in this order at 40¢ an hour. Do any of these men who are getting more than 40¢ an hour ever do work that ordinarily would be classed as common labor?
A. Yes, sir.
Q. Now, in carrying out this order you would have to pay the high priced man when he was splitting hogs that rate, and pay him common labor rate when he was doing common labor?
A. Yes, sir.
Q. Can you do that and keep the men?
A. Not very well, I believe, Mr. Hite.

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There was no trouble with employees or any controversies brought to my attention in December or January last; that about January 10th, 1921, I told the employees to go to their timekeepers or foremen, and find out their new rates, and advising them there would be no new contract made.

Q. As a matter of fact, Mr. Sheehan, didn't you have frequent meetings and conferences, and wasn't there an unsettled condition among the employees at your plant during the latter part of January, the latter part of December and January, up until the time this action was brought?

121 A. Never been brought to my knowledge.

Q. You never knew about it?

A. No, sir.

Q. Didn't have meetings with them?

A. No, sir.

Q. The question of the Alschuler schedule was not brought up?

A. Presented contract.

Q. Presented it to you?

A. Yes, sir.

Q. What did you say?

A. Asked them to come to me and have an interview with Mr. Wolff and they declined.

Q. Then there was an order issued on the 17th of January as to the wages?

A. Yes, sir.

Q. Didn't you have a meeting and call these parties together about the 10th of January, going over this entire proposed contract with them?

A. I did verbally, not to go over the entire program, no sir; had a verbal meeting, stating that the following week there would be a new schedule of wages go into effect and that they could find out their rates from their timekeeper or their foreman.

Q. What was the response to that?

A. Many inquiries from the men to the foreman and to the timekeeper.

Q. Didn't you state at that time that there would be no new contract entered into with these people?

A. Yes, sir.

Q. What was their response to that?

A. No response.

Q. And yet they had pending with your company a written demand for the contract, didn't they?

122 A. Yes, sir.

Q. And that schedule of wages was in accordance with the Alschuler agreement then in effect, wasn't it?

A. I don't know; I am not familiar with the Alschuler agreement.

Q. It had to do with the provisions as to the basic day, overtime, and other working conditions in identically the terms of the contract of May 10, 1920, didn't it?

A. May 10th, 1920?

Q. That is this contract presented along the early part of January?

By Mr. Hite: I object to that as not proper cross examination.
By Commissioner Noble: Overruled.

A. Mr. Sheehan: It was not the identical, if I remember correctly same clause in there with reference to bonus that was different.
Q. That was out and the guarantee was out?
A. Can't remember the guarantee."
Mr. Sheehan further testified:
"By taking a cattle killer and bringing him down to the shoulder shaver's job it is only necessary to hire one shoulder shaver instead of two, and if the other man were hired to shave shoulders they would still need the cattle killer for four or five hours a day, on the average. That is the reason one shoulder shaver was put on the list of wage at 72½ cents and the other at 50 cents."
Q. I will ask you if you didn't make this statement: 'In the first pay day affecting this—that this new rate affected, which happened on a Saturday, there was very much dissatisfaction displayed by the employees on leaving that afternoon about receiving their
123 checks. The timekeeper's office in connection with mine where the employees received their pay checks, and as it happened I was in my office when they were going out, I heard an awful lot of dissatisfaction, and grumbling, and discontent, and I really could not understand it. This was proven, or their dissatisfaction was proven by the fact that on Monday morning, after the whistle had blown, time to start to work, there was a number of employees gathered outside of my office and refused to work and after a delay of possibly thirty minutes, Mr. Blair instructed them to go back to work, that he would take care of their claims and devoted the biggest part of that day doing nothing else but going over this contract with Mr. Blair with the idea of getting a fair understanding, making several adjustments of rates, and we thought the matter was well understood." The fact is, Mr. Sheehan, you have had considerable trouble with employees down there since you have been superintendent?
A. Considerable along those lines there.

By Mr. Hite:

Q. Now, Mr. Sheehan, that was dissatisfaction with the union's own contract?
A. Yes, sir.
Q. It wasn't any dissatisfaction with any wages of the company?
A. No, wages demanded by the union paid at that time; dissatisfaction with the rates demanded by the union.
Q. Contract of May, 1920?
A. Yes, sir.
Q. And it was dissatisfaction among themselves and not with the Company, isn't that a fact?
A. Yes, sir, that is a fact.
Q. I believe that is all.

124 Direct examination of Mr. SMITH:

My name is H. E. Smith, I live at Kansas City, Missouri. Am an accountant with Ernst & Ernst, who are an accounting organization of about twenty-four to twenty-five years' experience, with branch offices in all the large states in the United States. The nature of their business is certifying to balance sheets and operations of corporations, companies, and partnerships of any nature, (Tr. 25). They are engaged in what is known as public auditing and certified accountants. Their reports are accepted universally by bankers, bond brokers, bond houses, broking houses, throughout the United States. My operations are located in what is called the Kansas City territory. I conduct and supervise the audits, take men out and start them and come back to complete the work and finish the work and turn it over to the office. Ernst & Ernst made an examination of the accounts and conditions of the Charles Wolff Packing Company. The paper handed me is the accountant's report of the Charles Wolff Packing Company as of the close of business on October 30, 1920, (Tr. 26). That was made by Ernst & Ernst. (Marked for identification respondent's Exhibit A.) The report correctly states and reflects the data and information obtained from the audit of the Charles Wolff Packing Company's books up to and including the date of the report towit, October 30, 1920. (Respondent's Exhibit A offered in evidence.) (Tr. 27.)

Cross-examination of Mr. Smith:

I started the entire examination and completed the entire examination. I did not do all the work such as checking out the individual items but I had assistants who had been trained by Ernst & Ernst. All of this data was checked over by me with the working papers the assistants turned in, and the working papers were gathered from the books of the Wolff Packing Company after considering our adjustments, but primarily they started out with the books as they stood. We started with the books of the company and examined the books taking off the general trial balance. I did not make any further examination of the books except to look up some item in doubt. I got out the books and papers and data and started the man on this work and he then made out working papers from time to time and then I checked these working papers over with him in the office of the Wolff Packing Company probably spent ten days or two weeks in their office so if any question came up I could refer to the books. I checked over his working papers which were completed at the Charles Wolff Packing Company and the report was rendered to the office at Kansas City, and was then certified to by Ernst & Ernst. (Tr. 29). No, it isn't certified to. On a good many reports they do not certify, just sign Ernst & Ernst. Their name itself is good, it would not require further certification. I am not in the position to attach a certificate for Ernst & Ernst, to this report. I am in position to say it is Ernst & Ernst's report. (Tr. 30). I did not check the quantities on inven-

tory as shown on page 10 of the balance sheet in this report, (Tr
31).

Q. On the last line of page, under the caption "Cost of Sales and
Inter-Company Transfers," you will note the following:

"Deduct: Inventory October 30, 1920, $407,328.56."

How did your accountant arrive at that figure?

A. That figure is the difference between the inventory as shown
by the balance sheet on page 10 and taking out the packing hous
supplies of $34,305.79, which was deducted to apply against pack
ing material. The $144,062.15 on page 13, packing house supplies
was not carried as cost of inventory.

The item of $144,062.15 is arrived at after deducting the $34,
305.79. It is not included in there. It would have been $34,000.0
greater and would have added it to inventory and cost of sales. I
we added that $34,305.79 to that figure of $144,062.15 would hav
been that much greater. It would be material whether you took i
up as operating expenses or cost of sales, inventory item. I do no
know what you mean by is or is not included in the item of $144,
062.15. That is arrived at after deducting the $34,000.00, (Tr
and the two succeeding questions and answers unintelligible). O
page 13 I am detailing a statement of expense and make the item
thereof operating or selling, there is nothing as to packing hous
supplies covered by this $34,000.00. It is named packing material
(Tr. 33.) The item of $34,000.00 is included in the $144,000.0
after considering that item. At the bottom of page 10 of the recor
is an item of prepaid insurance in the amount of $27,895.87 tha
would be included in several of those expense accounts under th
head of operating, and also under some of the accounts under gener
administrative expense of $149,890.14. The supplies inventor
shown on page 10 consists of office supplies, factory supplies, an
naturally it would be allocated among all those expense account
couldn't take it out of any certain one. It would be included in th
tabulation but not necessarily in the $144,000.00 item. On page 1
of the report under the caption "Other Assets, Railroad and I
surance Claims," amount $16,388.29; and considering the statemen
on page 18 in connection with it, and noticing that on page 18 th
allowance of $4,500.00 has been made to arrive at the amount
$16,388.29, while on page 14 under "Other Deductions" is listed a
item called "Provision for Doubtful Railroad Claims" of $4,100.0
The difference between those items would be the amount that ha
been set up on the books previous to October 30, 1919. The items
$4,500.00 and $4,100.00 are the same thing. The difference will
the amount they had on the books prior to October, 1919. They a

126 not the same probably by the amount they had set up
their books prior to October 30, 1919. There is no error
the statement of the account. The discrepancy would ap
against the allowance for depreciation. (Tr. 35.) On page 14 of t
report under the caption "Other Deductions" is an item "Non-incom
Stock written down," $1,748.00. The total sum of these other
ductions of which this item is a part is figured in the year's profit a
loss and properly show it is not net capital surplus. The transacti

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from which this item of $1,748.00 arose was made direct to profit and loss account between May 1, and October 30, 1920. It was one charge on October 30 and was written down the value of stocks of the Kansas City Farm and the Leavenworth & Topeka Railway. (Tr. 36.) There was nothing on the books to indicate why they were written down at that time. These railroad claims represent a loss of salable product in transit. They are all in the income on page 12; included in the sales, the item of $6,388,834.99. From our statement it would not be known whether that enters in there. When it is sold it remains a sale until the claim is allowed. (Tr. 37.) Not all the sales will be included in that, there might be some applicable to previous years carried in the item of sales. They would not be in this year's income, would be in last year's income. If carried over and not paid they would not be an asset, and at October 30, have a certain number of unpaid claims; couldn't put them back in the income account; still be carrying them as assets. This statement is an independent audit. We are listing all the assets of the company. That would be an asset of the company. (Tr. 38.) Would not be part of the sales that we are taking cognizance of in our present audit, it is listed as an asset of the company as of October 30, 1920, in assets carried over from October, 1919, there is no tabulation showing such. Any claim filed in the year ended October 20, 1920, would not be other than in the sales; any claim filed previous to that time would not be in the operating expenses or in the operating income.

Q. Where is there a tabulation or statement showing what is included in this item of $53,336.95 under the heading of "Returns & Allowances," on page 12?

A. That's allowances made customers on account of difference in the price, clerical errors, probably, in figuring invoices or actual shortages sustained and possible returned goods that customers return back to the plant.

(Tr. 39.)

On page 21 of the report the net book value of the lands, buildings, machinery and equipment on October 30, 1920 is stated as $1,298,-10.06.

A. Well, it represents the value that is carried on the books before they had the appraisal made.

That appraisal was based on the appraisal of the American Appraisal Company at that date. It was not just some one's idea, it was based on outside appraisal. On page 12 of our report in Income & Expense we secured the first item designated "sales" $6,388,834.99 by an analysis of the various merchandise accounts. We analyze to see what was in their sales and purchases, returns, etc. We started with the book account; took them just as stated on the books. (Tr. 41.) Then we apply against that any adjustments that we had found in reclassification of the accounts and we test a few of the analyses to see what are going in there. By that I mean that we took a month for instance and checked that up to see if they compared. In this instance here we took this analysis from the books itself and I believe I stated over here in front of the

report that we make no analysis of operations. We have not shown any classification of these sales as to product or customers. We did not make up a detail when we made this analysis, nor did we make up any classifications. (Tr. 42.) We took a few of these book accounts and checked for a month in order to get a basis to see what happened there, and then applied that to the class or group or book account. We did not attempt to prove these items of income and expense with every item. We had no working papers on the class of sales. The fourth item on page 12 designated "Freight, Drayage & Re-icing" in the amount of $179,560.44 were charges on merchandise going out from the plant of the Wolff Packing Company covering a period of the year. So we ascertained in connection with the audit. We could prove that by looking at the customers' invoices and seeing that the freight and icing were included in the sale made to them. (Tr. 43.) It would be verified in this manner, by taking the amount of the price to each customer and taking the market on that particular date and seeing the margin between what they would get and the amount they had allowed them for drayage, icing, etc. There were no specific entry of items, and the information I am stating I originally got from some one connected with the company. Packing houses all over the country do that. I do not sit down and figure them out; the analysis of the account showed it. I used that as my initial step. (Tr. 44.) I did not check any of these invoices for freight, drayage and reicing. It is the amount they paid the transportation companies for hauling the stuff out. We pay our own drayage, cost of getting it to the tracks, part of the icing we do ourselves and part they pay to the railroads where reiced. I do not know whether I have any tabulation in my report by which the item in gross is separated into the different items freight, drayage etc. I haven't the re-icing expense separated or freight and drayage. I would have to add these up and see which is which; I have the re-icing separated, but not the freight and drayage. (Tr. 45.)

The item of operating expense including labor $433,857.69 I secured from the plant payrolls. The item of "Packing material" in the amount of $144,062.15 I obtained from an analysis of the account. (Tr. 46.) I could not tell how much had been used from those accounts. I did not check the quantities. I took the information from the company as to the quantities. The item "officers' salaries" in the amount of $8,065.27 included salaries of Mr. Harris and Mr. Wolff. (Tr. 47.) The item of $61,450.00 office salaries, I took from their payrolls, checked one of them, and haven't made any analysis of that, an assistant checked the payrolls and prepared that item.

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The item "interest—Notes Payable" (Tr. 48) was the amount of interest they paid on loans during the year. The loan was tabulated. The rate of interest I do not know. The information that goes to make up the item I took from the analysis of the interest account on the books of the company, that is the general ledger. I do not know what the rate was or anything about them except that they are to banks. (Tr. 49.) There might possibly be one individual in there. They are not carried as liabilities anywhere. The in-

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est account would not show whether they were existing or whether they had been discharged, or what their condition was. You would have to get that in the notes payable account. I did not examine that. There was no balance carried to October 30. I do know that the banks did not report any or they would have been up there. My conclusion is that there were no existing or outstanding notes. (Tr. 50.) The fifth item on page 14 being "Loss on sale of bonds to Allied Packers, Inc." amounts to $2,552.71 consists of liberty bonds and other bonds. It is in the profit and loss account. I presume the charge off was the difference between the face and the market value; I do not know that. The other bonds are principally municipal bonds. Might be possibly Victory and Liberty Bonds but I haven't classified that. That is operating loss.

In the column headed "other deductions" there is an item of $20,127.12; that is the Allied Packers charge. Those bonds are not listed as a liability on this balance sheet. There is no account of them on this balance sheet nor on the Wolff Packing Company's books. We got the information from the analysis of various expense accounts. I assume they were bonds of the parent company I did not ascertain, I just carried them as it appeared on the books without asking any further questions. I do not know whether they are what you call operating expenses, of course I did not classify as operating expenses.

Q. I will ask you to state with the information you have *have* given here, with the meager information as to these values, whether you considered as an accountant you are authorized in charging that in operating expenses?

A. I think so, yes sir.

(Tr. 53.)

I think it is a proper operating charge because the bonds as issued are secured by permanent accounts. (Tr. 53.) I put it up to our Chicago office, they would have to tell me. If not a proper charge they would throw it out. I did not find anything among the books at the office that I would say would justify that as a proper charge, I left it up to our Chicago office. I do not know what the rate of interest was. The books did not disclose that. There was no entry to show it. I examined the books and other records of the company back as far as November 1, 1919. (Tr. 54.) The book
129 value of the permanent assets on that date I have listed here.

We started with December 1, 1919. I do not have it on November 1st, as to land, building, and equipment. I took the appraisal of December 1st, 1919. I started with their statement of December 1, 1919, that is shown at pages 20 and 21 of the report. The item of depreciation on page 14 being $59,206.06, is based upon its appraisal reconstruction value, is a general depreciation reserve covering the entire plant for the fiscal year ending October 30, 1920. (Tr. 55.) The reserve is to replace the physical plant eventually. The item of $5,658.44 designated "Interest Charges" is interest the company paid on notes other than notes carried by the Allied people. There is no list of those notes available to me for examination

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so that item simply represents interest charged that I find on notes that had been paid. We could have looked it up if we desired to tell to whom those notes had been given, but we did not. Do not have it among my working paper. Simply took the entry on the books for what it was worth. (Tr. 56.) We probably took it from two accounts, "Interest paid" and "Interest earned," or it might have been all in one account. I have no way to show by any other tabulations in this report what these items of interest were paid upon. The aggregate of all the interest I have shown in the report is the aggregate of the interest shown upon Wolff Packing Company's books. I segregated it from the entry in the books of the account. The books showed whether paid on note or paid on account. The item of interest charges on notes totaling $67 and some odd thousand dollars plus, was for notes payable to banks but interest was charged by the Allied Packers here. I called it central office charges. They paid the notes off. The same is true of the bonds, they are both Allied Packer charges against the Wolff Company. (Tr. 57.) We could have analyzed the notes payable to see whether the Allied people paid the notes themselvs, but I did not analyze that account nor did my man. There is nothing in the statement to show this analysis. Analysis of the notes payable account would show when the notes were paid. I am not able to state at this time or furnish any analysis as to data. (Tr. 58.) I just know for my own information how they carried it down there. An item of "Provision for Allowances, Discounts, and Doubtful Accounts," amount $9,011.12, includes provisions by the company to care for allowances and discounts and doubtful accounts. The item of $10,000.00 on page 10 is for the same item, the difference in amount is the same difference there is in claims. If the amount is uncollected, the reserve is bound to be different than the income and expense account. (Tr. 59.) I got my information from allowance from the item on the general ledger called bad debt reserve. (Tr. 60.) The amount was $10,000.00, the $9,000.00 was an undercharge to operations for the year. It may have accumulated all during the year. Part of it was during September and October and part prior to May 1, 1920. The entry on the Wolff Packing Company books was charged to profit and loss account. When I made this audit I carried the item in this allowance. (Tr. 61.) The $9,000.00 item I find in profit and loss account and the $10,000.00 item I found in the bad debt reserve account, one of which is the offset against the other. I do not know as they would ever be reconciled, they might accumulate for years and years. (Tr. 62.) I carried it to that subhead in my audit on the expenses. On the balance sheet on page 10 the bad debt is a $10,000.00 item that is the amount that is carried on the general ledger. On operations there is $9,011.00, that is the item we accumulated in profit and loss account during the year.

130 As to the appraisal of the American Appraisal Company I examined the appraisal just as any one would examine the report. (Tr. 63.) The computations and things of that sort and entries and method by which they arrived at their conclusions, I did not question at all. That is not our business. I just took what the

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stated and started with that. I did not take their appraisal rather than the sound value of the plant as shown on the books of the company because that is automatically cared for. There is nothing in this report that shows the sound value of the plant as shown by the American Appraisal Company. (Tr. 65.) That is set up on the books of the Charles Wolff Packing Company where you can easily determine how much difference there is between the book value and the sound value of the appraisal. There is nothing in the report upon which I could make that determination. The difference between the twelve hundred plus thousand dollars and the $992,000.00 item is the balance carried on the books of account, but we did not mean that that is the sound value, it might have no connection with the sound value. Might have charged it off during the year. The item on page 10 of $409,799.85 deduction called "Allowance to reduce reproductive values to sound values at date of appraisal, plus current depreciation" is the difference between what the American Appraisal Company said was the reproductive value of the plant, and the sound value of the plant. In other words, the difference between what it costs you to reproduce the plant and the value taken out, this depreciation reducing it to sound value, of actual sound value of the plant as shown by the American Appraisal Company. We did not necessarily mean sound value as shown by the books of account. This deduction was made on the basis of the figures of the American Appraisal Company. I could not say whether there was any depreciation reserve on the books November 1, 1919. I do not think I have it among my working papers. Started out with December 1st. So from my own knowledge and information I do not know whether there was any depreciation reserve at that time or not. It is not purely hearsay with me, it is there. Examined the books for various periods. (Tr. 67.) We started out with the December 1st appraisal, and the depreciation reserve on the books would be either increased to this $400,000.00 or be wiped off and $400,000.00 set up; either one of the two. I do not know what became of any depreciation reserve November 1, 1919, whether it went into operations or what became of it. On page 10 of the report, the item "Supplies Inventory" $27,895.87 consists of the inventory of various factory supplies; I did not check the quantities but did check the clerical accuracy and the pricing. (Tr. 68.) I do not know whether it was a single item or a dozen.

Item "bonus" $8,992.12 is a bonus to be paid plant employees. That I estimate is the total of it at that time. That would be in the amount of labor. The item on page 11 under the heading "Liabilities, Parent Company, the Allied Packers, Incorporated, Chicago," consists of cash balance, merchandise, expense items of various character, accounts payable to outside concern and appeared on the Wolff Packing Company's books at that time, the general ledger. (Tr. 69.) It was for goods that the Allied Packers bought and for merchandise shipments to their plants of the Allied people, merchandise purchased from other plants of the Allied people. The book having that in it is down there. I am not certain whether it would show the amount of the note or not, but it would show the

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amount of note they paid off. I examined that account. I
131 verified them in investigating whether they were true or no
(Tr. 70).

I reconciled them back with the Allied Packers' balance, the cur-
rent account. I did not set the aggregate of that item out in detail
showing the different character of the items, for instance, the num-
ber of notes and accounts and things of that sort because that would
entail a great long report and a detailed account and to itemize
the accounts is the only way to get at it. (Tr. 71.) There is no
way that you can tell what part of this $742,610.89 is made up of
notes paid. No way from this report to tell how much merchandise
there was in the way I spoke of it. It simply stands as a total.
It represents as actual existing indebtedness at the time I made
the audit consisting of various items, accounts payable. Some of
the items outside of notes and accounts payable I suppose were
sales to various other plants, shipments in there and things like
that. There would be a time when the reconciliation of these ac-
counts payable would be had on these different plants, (Tr. 72)
Goods furnished to and received from other plants are carried both
in one account as a "Balance of account." There is no correspond-
ing account which enters into the balancing of that. All I know
about this item and its constituent parts is what I saw on the books
of the company and what the Chicago office reconciled (Tr. 73)
I advised them what the balance was and generally reconciled it
during the audit before I left it. All I know about it is what I
found out on the book accounts. Our income and expense state-
ment shown on page 12 was made from the analysis given those
accounts on the books of the company, neither I nor my company
have anything in the report certifying that the income or expense
account shown on Page 12 is correct, I am not in a position to make
that certification now (Tr. 74).

In my letter on page 4 of the report I use the following words:
"In accordance with instructions, we did not audit the detailed
cash transactions for the year ended October 30, 1920," the purpose
of that statement was to show that we had not checked all the
checks, invoices and records. I say:

"* * * Purusant to request we did not correspond with the
individual debtors to vertify the book balance. We have, however,
made a thorough examination of these accounts and submit below a
summary of the accounts Settled and the Accounts Unpaid at De-
cember 4, 1920, classified as to date of charges."

Our examination is detailed right there. What was paid against
those charges subsequent to the date of our audit there was no way
to know. We did not verify by writing a letter to the customer.
On the next page, 5, of the letter I say:

"At the date of our examination we found the Accounts Receiv-
able in a deplorable condition, and we were advised that the Gen-
eral Ledger Control had been partly built up from postings

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Customer's Ledger, instead of being compiled from the original records."

132 We could not safeguard accuracy and satisfy ourselves ,and that is why we said that. On page 6 of the letter I say.

"You can see there what we said about testing the clerical accuracy and the pricing of the inventories."

We state there how we ascertained the accuracy. You have to read the two together (Tr. 76). We did not have anything to do with the quantities or the salable character of the inventory merchandise (Tr. 77).

On page 9 of the report, I say:

"We have hereinbefore commented upon the condition of the records with particular reference to Customer's Accounts, and attention is directed to the fact that in general we found the accounting records of the company in a very unsatisfactory condition. We noted, however, that at the time of our examination the accounting department was under the direct supervision of a representative of the Chicago office of the Allied Packers, Incorporated, and were advised that the prevailing conditions would be promptly remedied."

The purpose of that statement was to tell the Board of Directors and stockholders the conditions we found the records in, it was part of our audit.

Q. Wasn't it also the duty or the purpose to absolve your company from any responsibility by reason of inaccuracies resulting from this condition?

A. That's a pretty broad statement; inaccuracy of what?

Q. You were absolving yourself from the guarantee of the correctness of your audit by your report in regard to certain conditions you found there, were you not?

A. Stating the condition in which we found these things, yes sir.

133 Q. And that statement was made necessary by reason of the condition and general unsatisfactory condition that you found there in some of those accounts?

A. I didn't verify all these accounts by correspondence, if that's what you mean, Mr. McClain.

Redirect examination by Mr. Hite:

When I say we did not cover the income and expense matter, the cost of operations, I mean that we did not check the entries making up these accounts for the year and did not foot the records to see if correctly stated so far as operations have been concerned (Tr. 78). This statement of income and expense shows what the book accounts of the Charles Wolff Packing Company were. We did not go back of the statements on books and this report in every one of its figures reflects what the books show. On the operations,

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I have tried to state that we are not certifying as to operations but on the balance sheet we show what was there and what was not there that date (Tr. 79). These figures in here would consider any adjustments we make and all of them are taken primarily from the books themselves, and these figures that we have here appear on the books of the Charles Wolff Packing Company, and when I refer to inaccuracies I refer to conditions I found when I went down and these inaccuracies are reflected in this report (Tr. 80).

On page 16, "Reconciliation of Accounts Receivable" that is part of the correction of these inaccuracies that I discovered there, some are, and some reconciliation of accounts. On page 23 there are some more. That shows the change we made and those were, I believe entered on the books of the account subsequent. As to the matter of sound value I found there as of December 1, 1919, a report of the American Appraisal Company. They are one of the largest recognized independent appraisal companies in the United States. Their reports are accepted the same as accountant's reports relied on by bankers (Tr. 81). I have known of them for about six years at least (Tr. 82). I have run against their appraisals a dozen or more perhaps and I know their reputation is good. On page 21 of the report in question are certain statements with reference to the appraisal. In column 1, I show "Appraisal Reproductive Values 12-1-19, that is the value the American Ap-
131 praisal Company has set as the cost to reproduce the plant.

The item "Additions 12-1-1919 to 10-30-20" means additions that the Charles Wolff Packing Company have capitalized during that period (Tr. 82). When I say capitalized I mean they have paid that for additons to its capital assets. The next column "Gross Book Value 10-30-20" means the two added together and in column four I say "Reducing to Sound Values at 12-1-19" meaning by that the figure that the American Appraisal Company set up in their appraisal report to reduce reproduction value $1,682,756.56 to a sound value at that date. I do not know just how the American Appraisal Co. would define it. I took this statement from their statement (Tr. 84). I show an "allowance for depreciation" under the next column, "12-1-1919 to 10-30-1920," and mean by that that an allowance has been provided in the books of accounts from the time the appraisal was set up to October 30, 1920 to care for the estimated amount of shrinkage in value between December 1, 1919 and October 30, 1920. I got those figures from the books of the Wolff Packing Company carried in the depreciation expense account, if I remember correctly. Column six is the total of columns four and five. Column seven is the value that the books actually carried after deducting allowances provided on the books so that the sum of $1,294,276.96 plus dwellings, makes a total of $1,298,310.06 and is the net value of these items appearing on pages 20 and 21 as carried on the books of the company, October 30, 1920 (Tr. 85).

There are several rates used for depreciation. The rates that I use for finding depreciation were shown on the books, they are

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Dwellings	12 %
Buildings	2 %
Machinery & Equipment (Tr., 86.)	7½%
Furniture & Fixtures	10 %
Automobiles & Trucks	20 %
Teams, Wagons & Harness	20 %

Nothing for depreciation of land.

135 Recross-examination of Mr. Smith:

The computations are not all based upon the American Appraisal Company's appraisal, the amount in column four, $351,086.69 is based on their figures, also the amount of $58,841.06 is based on what the book records show. The first column $1,682,756.56 is based on the appraisal figures of the American Appraisal Company. Column 20 is based on the books (Tr. 87). Column three is a total. Column four is from the Appraisal Company. Column five is from the books. These rates of depreciation possibly may vary during the year, I did not check them out. I found they would vary. This report reflected the book accounts as we found them (Tr. 88). I am stating that this reflects the detail of all the facts relative to those accounts. We verified them on the balance sheet where we stated there in the report. The letter in front of our report is intended to give our view point of the report as compared to what we did and did not verify. We did not certify to any fact in this report, but I am sure the firm would certify to the balance sheet, they would not certify to the operations. Shrinkage of value might come from wear and tear on equipment and buildings.

Questions by the Commissioner:

I went to work on this audit about October 30 (Tr. 89). Found detail inventories in the office as to the two annual dates, 1919 and 1920. We found inventories and checked them. I understand by the term "sound value" reproduction value less proper depreciation. Our account shows a balance due the Allied Packers of some $700,000.00. I do not know whether that contains any interest balance due the Allied Packers or not, but my recollection is there is nothing other than those notes that I testified to, I would have to go over the entire account.

Further cross-examination:

The total item was the one I found on the books in the way of reduction, $351,086.69 when I started. I wiped out whatever was on the books and set up that. They started with that in the year 1920. Then it was separated to various accounts. Our working papers show that item was entered on their books on March 19, 1920 as soon as the appraisal was completed I assume (Tr. 92).

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136 E. M. WALDELE. a witness for respondent, being recalled for further examination, testified as follows:

I have made from the records of the Wolff Packing Company a statement of income and expenses for the period from Nov. 1, 192 to January 15, 1921. (Statement is produced and offered in evidence as respondent's Exhibit B.) I have made a similar statement from the records of the packing company of the income and expenditures for the period from January 17, 1921 to April 30, 192 (introduced in evidence as respondent's Exhibit C). I have made from the records of the company a statement of the amount of the plant payroll for the period beginning with week ending January 22, 1921, to include the week ending April 30, 1921. In connection with that have made a statement showing the result of the application of the rates fixed by the order of May 2, 1921 to the plant payroll. If those rates had been in effect for the period beginning with the week ending January 22, 1921, down to April 30, 1921 (Statement offered in evidence and marked Exhibit D.) January 15, 1921 was Saturday and was the close of a week as well as half of the month. On Exhibit B there is an item of "Total expense payroll plant," $80,036.49. Opposite each of the expense items are decimals, they are the percentage of the plant payroll of the gross profits (Tr. 94). $80,036.49 plant payroll from Nov. 1, 1920 to January 15, 1921 is .5382% of the gross profit of $148,718.39.

With reference to Exhibit C the percentage figures there are the same as referred to in Exhibit D they are the proportion of the gross profit. The payroll known as the plant payroll in that exhibit is the one affected by the Order of May 2, 1921. In addition we have another pay roll known as the Office Payroll. Referring to Exhibit D, the date of January 22, means the week ending January 22, and that is true of all the dates to the left of that (Tr. 95). The entry opposite "January 22" on the first line means that we are applying time and a half for overtime, and during the week ending January 22 if these rates had been applied or in force, there would have been $313.84 overtime paid to the employes affected by the order. The item of half time that we have in there means that we have increased the pay for the overtime 30¢ in the case of men getting 60¢ an hour straight time. The amount referred to there refers only to the 30¢, the half time (Tr. 96). I would not say whether it does not represent the 90¢ being the time and half, Mr. Wagner made this up for me and he said half time. The item payroll $6,929.41 is payroll figured at the new rates. Underneath that is the item "original payroll" which is figured at the rates we paid. That system is followed throughout the statement.

For the week ending April 30, 1921, we haven't paid any half time, that is because the payroll is in evidence (Tr. 97). I will figure up and furnish a memorandum showing what half time was for that week as well as the previous week. I have made up from the records of the company for the purpose of showing the effect of the wages fixed by the Order of May 2 on the business of the Company.

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Supposing this company had been running to capacity for the period of January 17 to May 30, 1921, the evidence is that the capacity of the plant is about 5,000 hogs. We reduce our figures to a hog killing basis (Tr. 98). I have been connected with the packing business about ten years out of the last fifteen, such practice is generally observed in the packing industries with reference to the cost of process, cost of manufacture. We would take the total expense and reduce it to a hog killing basis, get the cost per hog by dividing approximate killing into the total expense (Tr. 99). I have made figures to show what the plant payroll would have been at the rates of wages actually paid by the company during this period if the plant had been running to capacity. According to the business that was actually done between January 17, 1921, and April 30, 1921 the plant payroll cost per hog was $2.2785. During that period 42,980 hogs were killed in the eighteen weeks. The cost per hog if the plant payroll had been increased as provided by the Order of May 2nd would have been $2.4437 (Tr. 100). That means that it actually cost $2.27 plus per hog for the plant payroll for the period mentioned, and if the wages had been in force it would have cost $2.44 plus per hog.

By Mr. Hite:

Q. Now, Mr. McClain, I would like to know if you will agree that there are other packing plants in Kansas and that the Industrial Court has made no order fixing wages on any other packing plants in the State, will that be admitted?

By Mr. McClain: Upon no complaint made by employes and they have not been before the Court. Of course, not fixed any wages because not had complaint.

By Mr. Hite: It is admitted that there are packing plants similar to this and the Industrial Court has fixed no, or made no orders with reference to other plants and there has been no controversy connected with the packing houses before the Industrial Court.

Cross-examination:

I have made a compilation from November 1, 1920, to April 30, 1921 (Tr. 101). Exhibit E is that compilation of income and expenses covering that period. Exhibit F is my compilation of income and expenses from January 3 to January 15, 1921. Exhibit G is my compilation of income and expenses January 17 to January 29, 1921. My data for those compilations came right from the income and expense statement of the Wolff Packing Company. There is just one book that I have to consult to get that (Tr. 102). It is made from Journal Entries. All entries affecting all items during the month whether debit or credit. I have charge of those books and have offered a former Exhibit covering some of these periods. For instance A-I is included in these compilations that I have made here; all of them; anything from January 17, 1921 to April 30, 1921 is included in that. A-J is a copy of the statement made from that statement (Tr. 103). It is made up in a

different way. On the depreciation for reserve in Exhibit A-H I have an item of $450,000.00 which is the accumulation the balance sheet covers, a period of five weeks ending April 30. Prior to that depreciation of $442,999.00 was set up. I do not know

138 I said the reserve for depreciation was figured on replacement value under the American Appraisal Company's appraisal, but I think it was. The book values are figures set up on our books (Tr. 104). That is the foundation of the figures on our books. (Exhibit X-1 to X-7 inclusive offered and shown witness. Witness asked whether they are correct excerpts from the corporation returns made by the Wolff Packing Company for the years respectively shown thereon.)

"On behalf of respondents, we will admit they are correct excerpts."

Redirect examination of Mr. Waldele:

In our account with the Allied Packers, there is interest standing to the credit of the Allied Packers. That interest is a charge that the Allied Packers make against the Wolff Packing Company for each period; that simply goes through as a debit memorandum. We take it upon our books here through journal entry, crediting Allied Packers and debiting interest account. Our interest account shows all of the interest items charged against the Wolff Packing Company by the Allied Packers. In connection with Exhibit- A and A-J, the item of $3,341,455.24 and the inventory we took on our income and expense statement there are not the same because one is a balance sheet and one is an income and expense statement; there may be items in this inventory here that will be taken into consideration through this expense account. Live stock may show in this item here as packing house product, but would not show in the inventory that is taken into account in our live-stock accounts. Our inventory here of $321.00 plus is actually finished product, and the $3,341,455.24 on the Ernst & Ernst statement is a total of our inventory at that time; balance in our inventory account which necessarily would not mean that this is a balance in the account at all here. That is the inventory we start out with. The difference in that is taken up in the product used, there is no relation between the two at all except that the 321 is part of the 341 (Tr. 107).

Mr. Wagner, timekeeper of respondent, testified as follows:

Exhibit D which I made includes the item of $313.84, which means half time figured at the old rate. The new figure means new payroll figured at the new rate less half the time. Taking the case of the man who works ten hours a day with wages at 60¢ an hour we would figure his overtime at two hours so there would be an addition of 60¢, so the item includes simply the half time. The half time is figured at the old rate. A man getting 45¢ at the old rate, half time would be at 45¢ acording to that payroll there, when I added half time and added my old rate I got this overtime

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less half time. Half time would not be included in the new figure, just straight time only. Each one of these instances where I have half time means that the man worked overtime. The paper that I brought is the payroll of the plant ending March 26, 1921 (Tr. 109).

139 Mr. Hite: Sometime in July 1919, the Allied Packers put out $16,000,000 par value of what we designated as debentures. Those debentures bear interest at the rate of six per cent per annum, mature in thirty years, there is a provision for a sinking fund, and the interest is payable semi-annually on the first days of January and July. That issue of the debentures was put out entirely and was outstanding in September and October, 1919, when negotiations between certain stockholders of the Charles Wolff Packing Company and the Allied Packers resulted in a sale by certain stockholders owning more than 90 per cent of the stock of the Charles Wolff Packing Company to the Allied Packers, Inc. of their stockholders. The amount of the outstanding debentures, so-called, at the various dates of the balance sheets that have been introduced in evidence here, is shown upon those balance sheets. My impression is that at the date of the last balance sheet there was something over fifteen and one-half million dollars outstanding. I have examined the indentures securing those debentures. The debentures are secured by all of the property that the Allied Packers owned at the time of the indentures, or thereafter acquired, and accordingly would naturally be secured by the stock of the Charles Wolff Packing Company which is owned by the Allied Packers. I am advised that the interest upon the debentures, whatever amount there may be outstanding, is apportioned at periods of four weeks, or five weeks, as the month may happen to contain four or five weeks, as follows: There is apportioned to Parker, Webb & Co., what is known as the Detroit plant, 14.29 per cent; Buffalo, 5.96; Wheeling, 9.86; Topeka, 3.10; Richmond, 3.49; Macon, 1.90; Boston, 5.76; Canada, 56.64; making a total of 100. Sometime this Spring, but subsequent to the making of this order, the Allied Packers, Inc. sold what is known as the Bacheller plant, Bacheller & Snyder, which was not a packing plant, but a distribution plant, and the apportionment to Bacheller & Snyder of 5.76 was distributed among the remaining plants in the same proportion. This bond interest is charged against these several plants according to these percentages at monthly intervals, or more accurately, at intervals of four or five weeks, depending upon the time when the balance sheet is taken off and the income and expense statement is made, and the rate at which this apportionment is made is the exact amount of the accruing or paid bond interest as the same accrues and is paid. I may add that the interest on these debentures has been paid up to and including July 1, 1921.

Mr. McClain: Now, Mr. Hite, are you in position to state from actual knowledge the basis upon which the percentage is made?

Mr. Hite: I am not. I have asked our accountant to try and figure it out, and in the meanwhile I have written to Mr. Arthur, the Secre-

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tary at Buffalo, to furnish me that information. When I s "Secretary," I mean Secretary of the Allied Packers. I can't t you whether the basis is the capital assets or the income.

Q. As you recall it, Mr. Hite, didn't Mr. Wolff state it was bas on the valuation of the several plants?

140 A. I read that statement made by Mr. Wolff last night. isn't that. If you will refer to that he said he couldn't t you definitely.

Q. Well, I now object to all of this testimony on the question materiality and simply wish it to stand on the ruling of the co

Commissioner Noble: I believe I will overrule the objection immaterial.

Mr. WALDELE recalled for recross-examination.

I prepared Exhibits Y-3 and Y-4. Y-3 is a reconciliation of t current account for the period closing April 30, and commenci a day or two before the closing. Y-4 is a reconciliation of the c rent account for the period ending April 30. You might call a preliminary reconciliation, up to April 28. The loan account $323,202.99 represents the balance in the loan account for t April 30 period. That is on Exhibit Y-3. That was all of the loa from the Allied Packers existing at that time (Tr. 345). We didn figure any interest on that whatever. Any interest charge we ha by the Chicago office is by memorandum and they do not st what rate.

The item of interest on Exhibit A-I in the amount of $4,625. is the interest charged from Chicago for that period. I do n know whether it is the interest on $323,202.99. It is the inter they charged us, do not know what it is on. These bonds on wh the interest of $1,935.30 A-I is recorded upon included in the C cago Loan account.

Redirect examination of Mr. Waldele:

We endeavored to reconcile the statements of the reports made the Secretary of State with the balance sheet of the Co. (Tr. 34 I was able to do so. This is a statement that I prepared (Tr. 34 The figures that I got to make up my financial statement of sources and liabilities that went into the report filed with the Sec tary of State on March 31, 1921, were sent me by the central of of the Allied Packers in Chicago. The statement I have just tur over contains figures made up from our books here; it was sent Chicago before being filed. It was filed through Chicago (Tr. 34 They made the statement there and forwarded it to Mr. Wolff.

Cross-examination:

Exhibit Y-3 contains an item of $28,805.09 that is the bala in the current account at the end of the April 30 period. It either a debit or a credit, in this case it happens to be a credit the account with the Allied Packers (Tr. 350).

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141 E. W. JIMMERSON, District President of District #4, Amalgamated Meat Cutters' and Butchers' Workmen of North America, the district consisting of four states and parts of two states, Missouri, Kansas, Illinois, Tennessee, Kentucky and Indiana, testified:

The defendant's packing plant is in my district; I have visited the Wolff Packing Company's plant once for about thirty minutes and know something of the manner in which the plant was conducted. From my knowledge of conditions in other plants, the men in the killing and cutting gangs work on a "chain", and the men must keep up the work every hour. The "chain" is geared up to kill so many per hour and in some instances the chain is speeded up with the result that the men must work faster. This condition may not apply to the Wolff Packing Company but it is a general condition in all packing plants. The men stand in one position from the time they start in the morning until noon and then again in the afternoon, with no opportunity to rest, except that sometimes the "Chain" breaks down but they have to keep up with the chain. In the Wolff Packing Company plant, like a great many other small packing houses of its kind, men are transferred from one department to another; they will work in a hot place a part of the day and transfer to the cellar the other part of the day. In the hog killing department the work room is full of steam a great part of the time from the scalding vat or tub next to which they work. The hogs are scalded in hot water going through a machine which takes of the hair, and various operations upon the hogs are carried on along the line until the end when the dressed hog is passed into the cooler. In the various operations hot water and steam are used and gas torches to burn off part of the hair. Cold water and steam are both used to cleanse the hog. The workmen use waterproof clothing to keep their work clothes from getting wet. The women as well as the men wear water proof clothing, aprons and boots to stand on the wet floors and in wet rooms. The entrails are cleaned in the casing room. All the way through more or less hot water and steam are used. The water proof clothing worn by the workers are paid for by them; that is, they buy their own water proofs. These last about three months. The working time begins at seven o'clock when the workmen change their clothing in a dressing room provided for that purpose on their own time. After the work is done they again change their clothing on their own time. The work requires skill and strength. In the casing room the men and women work together.

142 Prior to filing of the Complaint in the Industrial Court I was in a position to know from conversation with or hearing various employees of the Wolff Packing Company state their feelings toward their employer, whether or not there was a controversy.

Asked with reference to the condition of the industry throughout the country the witness said:

"The industry was practically at peace with the exception of two or three places in the country; one of those places was the Chas.

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Wolff Packing Company. Sometime in March, 1921, there was a industrial controversy in the packing industry throughout t United States. One of the controversies was with the defend company which had refused to abide by the agreement. The co troversy was with reference to the eight hour day, "and time a one half for overtime".

The witness said further:

"On March 10th, I think, the packers repudiated the warti agreement and the result was that a strike vote was taken over t entire country by all the packing house workers, including th in the Wolff Packing Company. The result was that after three four days of conferences with the United States Secretary of Lab the President and his cabinet, the packers agreed to continue t Alschuler Agreement until September 15, 1921. This agreeme was made about March 23, 1921. A strike vote was taken early January, 1921, among the employe-s of the Wolff Packing Co pany and referred to me as I was in charge of the district and told the local union to abide by the state law instructing the co mittee of the Wolff Packing Company employe-s to present th complaint to the Court of Industrial Relations. I am familiar w the wages paid to packing house workers in other cities.

The witness identified a schedule showing these wages which w put in evidence as Exhibit A-9.

The figures set out in Column 4 were the wages at that time p to packing house workers in the various cities in the United St with the exception of Oklahoma City and Fort Worth, where t common labor rate of wages was 2½ cents lower.

I worked in a packing house about nine years ago and h visited the Chas. Wolff Packing Company plant as well as a la number of others; I have visited about a dozen other packing co panies in Kansas and the conditions in general in the Wolff Pl are practically the same as those operating under the Alschu Agreement.

These wages were paid in the five large packing houses in Kans the packing houses I refer to were operating under a contract co ing all the packing houses, known as the Alschuler Ag ment.

143 Q. You know do you not that down there the emplo and the packing company are operating under a contr don't you, at Wichita?

A. Yes sir, Federal contract covered all the packing houses.

Q. What's known as the Alschuler Agreement?

A. Yes sir.

Q. You know also that the Charles Wolff Packing Company e ployees never had any such agreement, don't you?

A. They had an agreement that was covered, I would say cove by Judge Alschuler's order.

Q. When did you see any such agreement as that?

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A. Think if you will note, the agreement was that the award should be applied to the Charles Wolff Packing Company.

Q. Aside from that did you know of any contract fixing wages at the Charles Wolff Packing plant by Judge Alschuler or his rulings?

A. No sir.

Q. What was that?

A. No sir, they agreed by mutual consent, by the employer and employees, to abide by future awards, however.

Q. That continued until the First of January, 1921?

A. Yes sir.

My understanding is that the wages in the Wolff Packing Company have always been nine and ten cents lower in the killing gang; that wages generally in the smaller plants are higher than in other places.

Q. When you testified that you were familiar with wages paid in other packing plants you have reference to the packing plants that are paying wages under the Alschuler Agreement haven't you?

A. About 95% of all the packing companies in the six states are referred to.

144 Q. And they are 95% of the packing companies in the states paying under the Alschuler agreement?

A. No sir.

Q. What's the difference?

A. Great difference; some of them have independent contracts; some under the Alschuler administration.

Q. Tell us one in the State of Kansas that has an independent contract?

A. State of Kansas? Can't tell you that.

I do not know what wages were paid in the small plant at Leavenworth, Kansas, which employs only about 25 men; nor do I know anything as to the current rate of wages paid in Topeka in April and May of 1921; 95% of the packing companyies in the six states were paying wages under the Alschuler Agreement; I have no information as to any Kansas plant that is not in the Alschuler Agreement; the dispute between the Wolff Packing Company and its employe-s was concerning the basic eight hour day and wages; I knew of no threats of a strike made to the company, as I was not in conference with the company at the time; with reference to the wide spread trouble to which I refer, a strike vote was taken which resulted about 225 to 1 for the strike and the strike was averted by compelling the packers to carry out their agreement, it being held that the contract was still in force, but the employe-s agreed to a wage reduction of 8 cents per hour and there was always a differential between the small packer here, meaning the Wolff Packing Company, of from eight to ten cents an hour on skilled work and the Alschuler rates were cut by the compromised agreement eight to ten cents an hour; the cause of the controversy was that the packers arbitrarily reduced wages. The workers of the "Big Five" packing houses were unionized.

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The organized workers in the Wolff Packing Plant belonged to the same general organization as the workers in the Big Five packing houses.

Responsive to questions by the Commissioner, Mr. Jimmerson said:

There was a reduction of eight cents an hour in the wages paid by the big packers. I know that the Wolff Packing Company does not have sufficient capacity to work its killing gang constantly.

Q. Do you know of any single one day when they ever
145 worked in the killing gang for anything like eight hours?

A. I don't know, like to have you ask that question of some man in the killing gang.

Referring to the reduction in wages, Mr. Jimmerson, said:

"This applied to common labor; if a man was getting 53 cents an hour before the reduction in March, after that time he would get 45 cents an hour and the same rate of reduction applied in the semi-skilled labor on up to the skilled labor.

146 Mr. M. J. Oswald, a witness for the petitioner testified as follows:

I have been a steam fitter and plumber at the Wolff Packing Company for thirty-eight months. I am a member of the union and there was a notice given to the men about the first of January, concerning the change in wages.

Q. Now there has been some evidence introduced here to the effect that at that time and upon that occasion there was no particular dissatisfaction at the plant among the employes; I will ask you to state whether or not there was dissatisfaction caused by that notice and that order?

By Mr. Hite: Object to this testimony unless it is intended to be shown that this dissatisfaction was brought to the attention of the management; hearsay; incompetent; and immaterial.

By Commissioner Noble: Overruled.

A. There was.

The union considered the action of the Packing Company and took a strike vote; the dissatisfaction among the employees is with reference to wage conditions,—the employees are not satisfied with what they are getting nor with working conditions. There is no pay extra for overtime.

Q. From your observation and experience there in going over the plant, in your communication and association with the workers in different parts, what you have heard them say, I will ask you to state whether or not the feeling down there among the workers, the operations of the Wolff Packing Company, is that of satisfaction or dissatisfaction generally?

A. Dissatisfaction generally.

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I am now receiving 55 cents an hour and in 1921 received 67½¢ an hour. I couldn't say whether I was getting more wages in January, 1920 than I am now. I haven't tried to find any other work at better wages.

147 When I said something about conditions being bad I meant complaints made to you when you go through the plant. I don't know their names—I don't ask every man his name. The dissatisfaction down there is general. That man sitting over here, Sheer, told me he was dissatisfied. I don't know how long he has been at the plant. He came there since January. He just said he was dissatisfied with his wages. That old gentleman over there told me he was dissatisfied. His dissatisfaction is they cut his wages. That gentleman over there said he was going to quit. I couldn't say when he told me that. I don't think it was as much as a month ago. I don't remember anybody telling me last fall they were going to quit. Things were pretty good last fall. After this notice was put upon the bulletin board that wages were reduced I think quite a number did quit. I don't know their names. Most every fellow in the house has told me since the first of January that he was dissatisfied. At least thirty people have told me they were dissatisfied about their pay and working conditions. The general complaint and dissatisfaction is about wages. They are not overworking me very bad. The conditions that we work under are not what they have always been. We are doing more work now than we ever did before. I do not have enough help to do the work I am doing. I didn't do this heavy work last year with the big am-onia coils.

I am dissatisfied because they didn't cut the wages of the machinist, but cut my wages.

A vote was taken by the union in regard to wages as to whether the union would strike or not which resulted in a vote to strike. This vote was taken sometime between January and the time this action was brought, but I don't know the date. I was a member of the grievance committee, but didn't communicate to the Packing Company management, the matter of the strike vote, nor did I ever talk to Mr. Sheehan about it because I did not think it would do any good.

Until three or four months ago I was on an eight-hour basis, but since that time have been working nine hours. It is unsatisfactory to me to work nine hours when carpenters work only eight hours in one end of the shop and the tinner works eight hours and the machinist and me work nine hours. I would rather work eight hours and don't care for the extra money for nine hours. I was asked by the engineer to work nine hours and I couldn't quit at eight hours. I asked to get off last Saturday and he told me if I quit I would have to take my man off to-. I wanted to get away and I asked him if I could get off an hour earlier and he said if you quit take your man with you. I did go. That is the only time I have asked off after eight hours. I would not feel at liberty after being directed by the engineer to work nine hours to quit at the end of eight hours. I felt that it would jeopardize my job.

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148 Mr. A. W. Q. SMITH, witness for the petitioner, testified as follows:

I have been a ham cooker at the Wolff Plant for three years and eight months; I am a member of the Union and when notice of the new schedule was given in January it was received with dissatisfaction by the employees (T. 168); the Union prepared a wage schedule and contract which the company refused to accept and I am now working under the nine-hour schedule inaugurated by the company; my wages have been reduced 10¢ an hour and the reduction is the cause of my dissatisfaction (T. 169); I am paid straight time for overtime (T. 170); one cause of dissatisfaction is that the wages of some employees were reduced and those of others were not (T. 175); I am now receiving 42½¢ an hour and under the old contract was receiving 52½¢ an hour, which included the bonus; in January, 1920, I was receiving 44¢ or 45¢ an hour (T. 176); I worked about the same number of hours when I got extra pay for overtime as I do now (T. 177).

R. L. GAMBLE, the Kansas State Architect, who had qualified himself to testify generally as to the relative cost of construction of buildings in 1919, 1920 and 1921, gave it as his opinion that taking pre-war prices as a basis at 100%, in 1919 costs of construction were 300% and in May, 1921, 200%, showing a reduction between 1919 and 1921 of substantially one-third.

149 Mr. J. C. SHEER, a witness for petitioner, testified:

I am a smoker and cooker at the Wolff Packing Company and have worked there since 1911; I am a member of the Union and was present at the meeting when they considered the new contract which was rejected by the Wolff Company (T. 178); that I was getting under the old contract, 55¢ with bonus, and I am getting 42½ now (T. 179).

Q. You may state whether or not you were present or know of dissatisfaction among the employes resulting in a strike vote being taken about the time this order was put in effect?

A. The employes voted to strike and then they thought best to take it to the Industrial Court.

Q. There was a strike vote taken?

A. Yes sir; thought it best to abide by the laws of the State of Kansas.

Q. That's how this case got into Court?

A. Yes sir.

Q. You may state whether or not working conditions have changed at any; or to any degree, down there since the First of the Year?

A. Working conditions changed considerably; figure you ought to be a slave down there.

Q. Work you more than they did the first of the year?

A. Drive you. If they had a black-snake like they used to have in the south they would be all right.

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I am paid on a straight time basis for overtime and I am dissatisfied with my wages; I smoke, cook and run the bake oven myself (T. 181); each job requires skill and I should get a little more for being an all-round man; my objection is that I don't get extra pay for overtime.

150 Q. Have you made any effort to get a job at a higher rate of wages?

A. I have not.

Q. Why?

A. Because I don't consider I want to leave town; no other packing houses in Topeka.

Q. You haven't been so discontented that you were ready to quit?

A. Provided I could get another job for more money.

Q. You haven't made up your mind to quit because you were so dissatisfied you wanted to quit?

A. You can't quit a job right off when your grub is at stake; fellow has to eat some place; no other work open.

In January, 1920, I was receiving 44¢ an hour as a stamper in the cooler; I worked for the Wolff Packing Company from 1911 until a short time before I went to war (T. 184) and returned after my discharge from the navy.

Q. Then when you came back from the war you went back to your job?

A. They wrote a letter trying to get me discharged from the Navy Department so I could come back with them; they were burning up thousands of pounds of sausage.

When I was changed to my present job I was raised to 55¢ an hour with bonus under the contract of May, 1920 (T. 185); before I went into the Navy I was paid 27½¢ an hour for doing the same work.

Q. Who has talked to you, Mr. Sheer, expressing dissatisfaction?

A. Myself?

Q. Who has talked to you, anyone else?

A. All of them are dissatisfied.

Q. Who, give us the names?

A. I don't see why we should tell names when I said all of them.

Q. Majority of them?

A. A man won't go on down there now unless he has to have something to eat.

151 Q. Is there any shortage of men down there now?

A. They hire men there every day because the men quit; can't live on what they are getting.

Q. Plenty of men waiting for jobs?

A. Lots of Mexicans.

Q. Lots of Americans; you are an American are you?

A. Yes sir, supposed to be.

Q. Haven't fired you?

A. That ain't no sign they won't.

Q. They have nobody applying for jobs but Mexicans?

A. Mostly all Mexicans, yes.

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Q. Do they hire these Mexicans?
A. This morning they left three white men sitting on the do and hired some Mexicans.
Q. What are the Mexicans hired for?
A. Pickling department.
Q. Know of many men waiting for jobs?
A. Guess there won't be none when the Santa Fe starts up.
Q. You are not here except to answer as counsel may be pe mitted to ask you; do you know whether any people are waiting take jobs at the wages offered by the Wolff Packing Company?
A. Until they can get something to eat, yes.
Q. You may answer yes or no, if you don't know, say so? D you know whether there are any people waiting there to take the jo offered? The jobs offered by the Wolff Packing Company at t wages now being paid?
A. Yes sir.

152 Mrs. SUSIE KNISLEY, a witness for petitioner, testified:

I have been a trimmer at the Wolff Packing Plant sin December 10, 1920. I was there about the first of the year wh some controversy came up about the new wage contract. I am member of the union; the Wolff Company just posted a wage sc and said the wages would be cut a week ahead of time. A stri vote was taken in the union. My wages were not cut by the n schedule, but I am dissatisfied with them. The working conditi are poor. My work in the trimming room where it is between and 40 degrees and then they take me up to a hot room wher is around 110 degrees. When I go from the cool room to the h room I have to put on less clothes. In the trimming departmen put on a jacket or jumper and sweater and a rubber apron. I sta up at my work all the time, there being no provision for sitti down. I receive 27½¢ an hour when I work in the head room an when I work in the trimming room I am paid by the piece, pa at 70¢ a hundred and 75¢ a hundred. If I were employed in t trimming room all the time I would make pretty good wages. spend about three days a week in the trimming room and 2½ d each week in the head room. The cause of my dissatisfaction is th they agreed to give me a man's wages when I did a man's work, a I have never yet been given them. I want the same pay as a m receives for doing the same kind of work, and that relates to t work in the head room. During the last three weeks we we allowed to work nine hours but that did not suit me as I do n care for more than eight hours.

When asked if she would rather work ten hours and get mo money when she was feeling all right the witness replied,

"No, sir." I have made no effort to find employment at bet wages elsewhere.

In the course of Mrs. Knisely's testimony, it appears that at t hearing before the Court of Industrial Relations in March, 192 the packing company agreed to pay women the same amount

wages as paid to men if the same work was as efficiently done. Mrs. Kniseley said that this promise had not been carried out and that she was not receiving the same wages that men received in the cutting department and did her work just as well as the men. In this connection she said that another woman worker whose work
153 was as good as the men's work was Mrs. Reynolds.

Upon getting this evidence, counsel for the packing company stated that it was his view that women who did as good work as men should get the same pay and that he would get a report upon Mrs. Kniseley.

While not consecutive in the record, reference is here made to the petition filed by the Packing Company after the close of the testimony together with the affidavit of the president showing that the promise of the packing company to pay women the same as men for like work as well done had been carried out in the case of Mrs. Kniseley. (See petition for leave to introduce further testimony filed by defendant.)

W. J. KIRKPATRICK, an employe of the defendant for about two years, working in the trimming room, testified:

I am working under a different wage schedule from that in force in the First of 1921 and under the new schedule I am getting 5¢ an hour less than under the old schedule without bonus; that there was no change in the working conditions; I am not satisfied with my wages; I get straight pay with no extra pay for overtime; I do not work as much overtime now as at the first of the year; so far as my department is concerned the work is about the same as previously; from my observations and conversations with other employees they all seemed to be dissatisfied.

Asked what the conditions were at the time he testified, the witness said he did not know.

I have not talked with any of the men and paid no attention to it; I was getting 37½¢ an hour and in January, 1920, I got 42½¢ an hour; I am a helper in the trimming department; take care of the meat, weigh it and wait on the trimmers; my occupation is known as that of a helper.

154 Asked what the general dissatisfaction at the plant was about he said, he supposed it was mostly about wages.

He was asked:

"Q. There hasn't been any trouble that you know of?

A. No trouble."

I have not noticed any change in working conditions in the last six months.

JOHN NIDENS, an employe of the defendant for a year and six months, working as butcher and meat cutter, testified:

About the time of the expiration of the old contract I was a member of the union; that the wages were discussed in the union and taken up with the officers of the packing company; that a new contract was drafted and presented to the packing company but was not accepted;

that the present wage schedule was put in effect in January, 192
that the packing company stated the wages it would pay in a bulletin
this schedule of wages made a difference in my pay of from 37¢ t
40¢ a day; I work 9½ to 11 hours, getting paid for 9 hours; do no
get any pay for overtime; there had been a reduction of one man i
my department; a strike vote was taken in January, 1921, in m
union; there was no strike.

Asked if he was satisfied with the wage scale and working con
tions, he said:

I only get paid for nine hours work ten and eleven hours a day;
work by the day and my wages are $4.00 and I receive this whethe
I work 9½ or 11 hours. I do not have to work on Sunday. I di
not work for the packing company in January, 1920, but during th
year 1920 got 42½¢ an hour and a bonus and worked from 12 to 1
hours a day at 42½¢. I am dissatisfied with my wages and woul
rather be paid by the hour. My occupation is to cut up meat and
am known as a butcher.

Asked if he knew what rate of wages were fixed by the In
155 dustrial Court for his position he said he did not know bu
that $4.00 a day would not be satisfactory if the work w
longer than eight hours.

Asked who he had talked to about dissatisfaction, he said that h
hardly talked to any of the employes but heard them talking amon
themselves each day.

I have made no effort to get a better job or better pay. My re
dissatisfaction is that I am not getting enough pay.

By Mr. McClain: And your objection to the number of hours y
have to work?

A. Yes sir.

Q. You prefer eight hours a day?

A. Eight hours a day; as I said, the superintendent comes arou
and says you boys work nine hours a day and get so much; paid
much a day, and work you all the way from 9, 9½, 10 and 11 ho
a day, and I prefer 8 hours.

By Mr. Hite: How many days last week did you work 11 hou

A. Think it was one day worked 11 hours, and different tim
you know how it goes.

Asked what it was that made some of his day's work longer th
others he said:

Seems as though he has got too much work and that leaves
fellows standing around and we can't go ahead with our work. Wh
five o'clock, quitting time, comes, he (foreman) wants to run
cattle, that takes about an hour; wants to clean up, have to do t
work; 11 hours of work down there is absolutely unnecessary. Y
terday we were standing around doing nothing. I kept right on
job. I could do that much work in much less time. I am the o
man down there doing my kind of work. Only one in my dep
ment.

Q. Are you changed from one job to another down there?

A. Sometimes. I don't get changed around much."

156 W. Reecer, a witness for petitioner testified:

I have worked for the Wolff Packing Company about twenty-three months; for little more than a year I packed dry salt meat; but I have been baking hams a little less than two months; I am a member of the union.

Q. And do you recall about the first of the year when the old contract expired and a new one was being considered?

A. Yes sir.

Q. And do you—were you present when the strike vote was taken by your Union?

A. Yes sir.

Q. What was that strike vote taken for; what was the occasion?

A. To be taken for a strike and then it was brought to the Court. I am not satisfied with the amount of wages I am receiving and I get no extra pay for overtime, which runs from two to four hours, but that there was just a little less overtime work last week than the first of the month. I am now getting 42½¢ an hour and I was getting, under the old contract, 50¢ part of the time and 45¢ part of the time, together with bonus; in January, 1920, I was receiving 45¢ an hour for piling meat (T. 220); and was receiving no overtime then; I get the same pay whether I am piling the meat or doing common labor (T. 222); that it takes skill and experience to properly pile the meat because it has to be piled according to different kinds of meat (T. 245); I was engaged in similar work seven years ago and received 25¢ and 27¢ an hour for it (T. 223); the whole trouble over which the vote to strike was taken was wages and time and a half after eight hours; they have to work right along now (T. 224); I have made no effort to get any other job (T. 225); the court's order of 44¢ per hour and time and a half for overtime is satisfactory (T. 226). The employes were willing to stay at the reduced wages to see what the Industrial Court will do.

157 Mr. A. L. Blackwell, a witness for petitioner, testified:

I have been an employee of the Wolff Packing Company for nearly seven years and work in the casing department (T. 228); I am a member of the Union; and the strike vote was taken on account of dissatisfaction with wages and working conditions (T. 229); the new wage scale made a 10¢ cut, including bonus in my pay, but work as many as 10½ hours (T. 230) and get no extra pay for overtime.

Q. And so far as your observation around the plant there is concerned I will ask you to state whether or not there was considerable dissatisfaction along in January, the time this contract was being considered?

A. Yes sir, there was.

Q. And has there been any dissatisfaction or has there been satisfactory conditions since this new scale was put in effect?

A. Dissatisfaction.

Q. In regard to what, wages or working conditions?

A. Both.

I am dissatisfied because my wages have been cut too much; I a now getting 47½¢ an hour (T. 231); I am dissatisfied at the w they do around there, working in cold and hot places, dirty dressi room, water splashing on your face, no protection whatever for man. There is water on the floor but that can't be helped. The is a leaky chute that lets the guts down,—this needs repairing; th I have to go down in the cellar and work where it is kept cold keep the meat fresh. I think they could put somebody else do there and not take men in a sweat and put them down in the cell

Q. What you want is 50¢ and not have to go to the cold room refrigeration room,—that it?

A. I don't want the job.

Some weeks I have worked overtime one or two days out of t week, some days I work less than eight hours because I have nothi to do; besides working in the casing room I trim hogs; I get the sa pay for all the different kinds of work (T. 237); In January, 19

I was getting 44¢ and 45¢ an hour for the same work tha

158 am doing now (T. 238). Before the wages were cut t

Union was recognized as to working conditions, but since t cut everybody is scared of getting fired. In some of the dep ments down there blood and refuse and offal and things of that ki make a disagreeable atmosphere to work in, which is one of m reasons for wanting an eight hour day. My opinion is that ge erally the employees want the eight-hour day because of the cond tions and character of the work. The reason I don't quit at t end of eight hours is because Mr. Sheehan made the statement th anybody that would quit and leave the job before he got notice fr his boss would be discharged the next morning. Although the n ture of the work makes it disagreeable, and for that reason I w the eight hour day (T. 240); I would be willing to work overti if I received extra pay for doing so (T. 241), if working conditi were improved. Working conditions are different from what th were when they were working under a contract, in that they did n try to drive a man and they tried to keep the dressing room cle and whenever any of us needed something we generally got it so as better working conditions like cleaning up, etc. The dressi rooms are dirty and there is no ventilation to speak of in there that makes it bad. This condition did not exist under the contr last year; one man does the cleaning all over the house and whe asked him why he did not clean up he said I haven't got time. I year he had an extra man to help him. I have to go down in t cold place two or three hours whenever they are short. I do work any more hours now than I did last year.

159 Mr. W. S. Glover, a witness for petitioner, testified:

I have been an employee of the Wolff Packing Company for years in the pickle department; I am a member of the Union 247); the new wage schedule was not the result of any agreem between the Union and the Packing Company, but was made u the initiative of the Packing Company; my wages were cut 1½¢

hour and bonus, but my objection is that I am not getting enough pay and the fact that I get no extra pay for overtime (T. 249); that the Union took a vote to strike on account of the new schedule, but brought it to the Industrial Court instead. (T. 248.) I was dissatisfied with the situation at that time. All the employees I have talked to were not satisfied with the wages they were getting and were having to work overtime. The union is composed largely of employees of the Wolff Packing Company. They had a strike in 1918 and were out nine weeks and two days and then went back; the plant did not stop running, but it might as well; when they went out there were only three employees left. That strike was for more wages and was compromised 50-50; that was after the union was organized; there was no strike there before the union was organized and after the strike vote was taken this time we came to the Industrial Court. We did not strike but came to the Industrial Court and kept on working at the wages they cut us to; we did not discuss in the Union the fact that times were hard and business poor, but did decide to take a strike vote for more wages but in place of quitting the job came to the Court of Industrial Relations. We did that on the advice of the president and officers of the Union.

I am now getting 42¼¢ an hour and last year I was receiving 44¢ an hour without bonus. In January, 1920, I was receiving 50¢ an hour (T. 254); after the strike in 1918, I was raised to 35¢ an hour, working in the bakery; I am getting more wages now than in January, 1920; I have been working about the same amount of overtime from January, 1921, to the present time as I did the year before (T. 255); the kind of work I do has to be continued until the meat gets into the cooling room and could not be stopped without a loss (T. 256); the killing gang do other work when they get through killing; my objection is to the amount of wages and no extra pay for overtime (T. 257).

Q. Would it be satisfactory to you to work 48 hours a week
60 with time and a half for time after 48 hours?

A. I am willing to take the decision of this Court.

Q. Whatever it may be?

A. Yes sir.

Q. If they cut your wages you will stand for it?

A. You dog gone right I will.

Q. Have you been talking to Judge Huggins lately?

A. No sir, I haven't had no time to talk to him.

By Mr. McClain: What is your observation of the attitude of the employes down there in regard to the court orders?

A. Court's order? Why, they all stand for it.

Q. That's all.

Mr. W. T. Graham, witness for petitioner, testified:

I have been an employee of the Wolff Packing Company for about twenty months; I am now an inspector and belong to the Union (T. 250); I now draw, under the new schedule, 37½¢ an hour and under the old contract I drew 44¢ an hour and bonus; I work from ten to thirteen hours a day and get no extra pay for overtime (T.

261). I was present in the Union when the strike vote was take but there was no strike called. However, they voted to bring it the Industrial Court. In my observation and contact with the em ployees around over the plant I would say that there was a gener feeling of dissatisfaction, they all feel that they are not gettin enough wages, and lots of the time we have not men enough to d the work and have to work overtime to get it done. There has be more Mexicans hired since the first of the year than were ever the before. That generally the employees feel they are not gettin enough wages; they have about the same number of employees no as at the first of the year (T. 262); the vote taken by th

161 Union relating to the action of the Packing Company w "either a strike vote or take it to the Industrial Court;" th the vote resulted in a determination to present the matter to th Industrial Court and was practically unanimous and that except stated there was never a vote to strike, no one voted to quit wor and that when the witnesses testified that they voted to strike th is what they meant (T. 264).

That the overtime work was caused by the excess killing; th if they employed more men that they do now they could only ke them working two or three hours if they killed constantly and th the only way the necessity for overtime work could be overcom would be to have a few more men for a few hours' work (T. 265 that it is hardly practical to arrange the work so that the force wo not have to work overtime; in January, 1920, I was getting 37 an hour, which is the same amount that I am being paid, but in my opinion I am more efficient at this time (T. 266); the dissat faction among the employees of the plant was caused by the redu tion in wages (T. 267); when the old contract expired and a ne contract was offered to the company the employees didn't try agree on terms; under the contract which was offered some of th employees would have gotten less money (T. 268).

Mr. J. E. Fenolio, a witness for petitioner, testified:

I was an employee of the Wolff Packing Plant for seventeen an one-half months, being discharged the 26th day of May, 1921; I w a smoker or scaler and am a member of the Local Union (T. 270 the new schedule took away my bonus and I got a little more pe by the week. I was present in the Union when the strike vote w taken, the vote was just to decide whether we wanted to go out on strike or not and they finally decided to take it up with the Co and left the Court settle it.

162 Mr. O. A. Chase, a witness for petitioner, testified:

I have worked for the Wolff Packing Company for five years am a cooper, I am the financial secretary and treasurer of the Lo Union; was on the contract committee which prepared the new co tract (T. 272); and that the contract presented by the Union w not accepted and the Wolff Packing Company put in its own wa scale; the Wolff Company didn't notify or file with the Union a

wage scale (T. 274); the matter of striking because of the refusal to accept the contract was discussed at a mass meeting and it was finally decided to present it to the Industrial Court (T. 275); as compared with the first of the year there is a big difference in all departments as to working conditions, "more work turned out; turned out different; a man works different;" the dissatisfaction of the employees is caused by the number of hours' work and because the pay is too small (T. 273); that there is no limit to a day's work that the Company through its officers or foremen wants to put on them.

I have talked with 200 of the men within the last two weeks and never yet have had a man tell me he was satisfied. There is more of a turn-over in labor since the First of January than has ever been before. During the strike in 1918 the cooper shop stopped running and I went back to work at increased pay. In 1918 after the strike I received $3.15 a day (T. 279); I am now receiving $27.50 a week (T. 280). I do not want to work more than eight hours per day. I am given substantially the same wages now that I got last year, except the bonus.

Q. Coming to this dissatisfaction of these 200 men that you spoke of, do you recall any time since you have been there that when you get 200 men together they would not be kicking about something?

A. Not unless some agitation; some reason for it.

Q. What was the agitation here?

A. No limit on a day's work.

163 Q. That's the chief trouble isn't it?

A. Not enough pay for another thing; no limit on a day's work.

If some men do not report for work in the morning those who are there have to carry on their work and keep it going and it is necessary sometimes to fill the chain in the killing gang by shifting some men (T. 282).

In my opinion it would be practical to put the entire force on an eight hour day if things were arranged efficiently by the officers.

Q. Yes, there is something in that. Take a man for a week and we will say he puts in his 60 hours a week, that's 10 hours a day, he gets $5.00; think that man would be content to work 8 hours and get $4.00; wouldn't he rather have the $5.00 than $4.00?

A. It isn't the point. If he is working 10 hours in that plant he won't stay there 3 months until he gets out.

Q. You mean you can't stand it?

A. There are places there you couldn't take me down there and tie me and keep me there.

After the killing the operations have to be continuous until the meat is in the refrigerator (T. 283); the pay I am receiving now is satisfactory to me (T. 286), which is same pay as fixed by the Industrial Court.

164 Judge W. L. Huggins, witness on behalf of the petitioner, testified as follows:

Q. You have been sworn, Judge Huggins, to testify in this case before?

A. Yes.

Q. Do you recall in the trial before the hearing before the Court of Industrial Relations the testimony of Mr. Wolff?

A. Yes sir.

Q. As to the pay schedule that was being paid the men at the plant?

A. I recall that he testified in regard to that.

Q. And do you recall in that testimony of his reading these schedules into the record?

A. I recall he stated the wage for the various operations. I don't remember whether he had a paper before him. I think he did. He must have had. He testified as to the various positions or jobs.

Q. Refreshing your recollection, I will ask you to state if he didn't testify as to the requested wage over the proposal of the company and the wages they were paying?

A. Yes, I think so.

Q. Proposal of the complainant and the wages they were paying?

A. Yes, sir, I think that's right.

Q. I now desire to offer the testimony of Mr. Wolff in the hearing before this court, which has been referred to by Judge Huggins and consisting of pages 532 to 548.

Judge Huggins testified on cross-examination:

Q. Judge Huggins, you were inquired of regarding certain testimony given by Mr. Wolff. Do you recall the circumstances, Judge Huggins, of the matter of overtime being called to your attention?

165 A. I recall that the payrolls were called to my attention. I don't now remember that overtime was specifically mentioned but I knew they showed overtime, so it don't make any difference whether you called my attention to it or not; I knew that overtime was shown on the payroll.

Q. That would be primarily a source of information to show the application of any rates that might be made?

A. I regarded — as the only source of information I would have as to overtime.

Q. As to the wages, you felt that the hourly wage or the daily wage or the weekly wage was sufficiently disclosed by the testimony of Mr. Wolff?

A. Yes, and in connection with the testimony of Mr. Wolff and with your consent, if you remember, we brought up Mr. Sheehan and Mr. May to go over Mr. Wolff's testimony so as to be sure that we got the right job to fit on to the right wages, but I knew that the payroll showed the amount of overtime."

Mr. J. N. ATKINSON, witness for petitioner, testified:

I am the accountant for the Court of Industrial Relations; I have been in attendance upon the trial of this case and heard the testimony of Mr. Waldele, an accountant of the Wolff Packing Company, and the testimony of Mr. Smith of Ernst & Ernst (T. 295); I have examined the various exhibits offered, identified and referred to by them in evidence in this case, referring particularly to Exhibits "A-H," "A-I" and "A-J"; that from my examination of the exhibits I think the accountants are entirely off when they say they base depreciation upon replacement value based on appraisal value (T. 296); I think they have erred as to the basis of their depreciation and that it should be based on the original cost of the assets; such an error would affect operating expenses and income and
166 amount of reserve set up from time to time; would affect the amount of profit or lack of same (T. 297); I have not made any estimate or calculation so as to be able to state what difference the method of fixing and rating depreciation would make in the reserve for depreciation (T. 298); the original depreciation account and the appraisal of the American Appraisal Company runs about three to one and that decreases the reserve and increases the profit and decreases the loss (T. 299); I have not made any inspection of the books of the company to ascertain whether the merchandise under the general classification of inventory was in possession of the Charles Wolff Packing Company (T. 300); I didn't examine the books to ascertain whether the explanation of Mr. Smith as to cause of a discrepancy in the report on Pages 10 and 12 was shown on the books; I was not able, from my examination, to satisfy myself that the inventory set forth in this Ernst & Ernst report was shown upon the books of the company (T. 301); the only examination I made for the period of the Ernst & Ernst report was to compare the statement on the balance sheets of the books of the Wolff Packing Company and it was as stated in the report; I had no way of checking the item described as "Packing House Supplies" on Page 10 of the report as to whether it was included in the item under "Packing Material" or under "Operating Expense" on Page 13; I had no way of checking the item of "Railroad and Insurance Claims" on Page 10 and the deduction on account of doubtful railroad claims (T. 302); or the item of $4,100.00 under "Other Deductions" on page 14, nor was I able to ascertain what the item for "Non-Income Stock" written down "under the head of "Other Deductions" on Page 14 was (T. 303); I had to make this examination" without having or without being able "to take the necessary time to go into the thing" (T. 309).

With reference to the question of the account of the Allied Packers I did not examine the books with the view of ascertaining the items or things that made up that total (T. 310). I was offered every convenience when I visited the plant to get information; I was given access to anything I asked for; my inability to check the balance sheets is partly due to want of time and partly because of the peculiarity of the account—"a little difficult to find these things, Mr.

Waldele is a busy man and I was busy too"; I have not been obstructed in any way by the Company and the books have been open to my inspection (T. 316).

167 Mr. H. C. Bratton, a witness for the respondent, testified:

I have worked for the Charles Wolff Packing Company for about three years as foreman in the lard room and in that capacity I come in contact with the employees daily; it would be hard for the Charles Wolff Packing Company to operate on an eight hour basis by having shifts of men; the length of time the men must work depends upon the circumstances and conditions of the work at the plant (T. 318); it would be impracticable to have the men leave their work at the end of eight hours and put on another shift because the new shift would only work one or two hours a day; I do not know of any dissatisfaction which has existed in the plant which threatened to stop operations in January of this year; except for the strike in 1918 there has been no interruption in the operation (T. 319); that about a year ago there was some disturbance at the plant over some bills posted up down there, but it had nothing to do with wages.

All of my men are putting in long hours, are efficient and seem to be satisfied with their jobs (T. 320); when there is extra work above eight hours by reason of there being a large amount of stock killed that day, it affects my department and naturally causes over time (T. 321); in my department they have been working more overtime the last six months than the six months previously; the rate of pay in my department was not changed to amount to anything.

I am not a member of the Union. I did not know any of the details as to the matter of the new contract or what was the action and feeling of the employees there, who were affected by the change and my department was not materially affected by the reduction.

Mr. George Laverty, witness for respondent, testified:

I have worked for the Charles Wolff Packing Company for twenty-four years and am division Superintendent and my duties take me into all of the departments but I have nothing to do with the killing operations. I have about fifty men under my supervision, being paid from 35¢ an hour up to $30.00 a week; manual labor is paid as high as 45¢ an hour and out of the fifty men probably twenty are receiving that scale (T. 328);

168 I was at the plant during the Spring of 1918 and the plant did not entirely stop running; since that time little trouble has been threatened at the plant but nothing that would threaten the cessation of operations;

I did not hear of the condition existing there about the first of this year, but knew the employees were talking about a renewal of the contract. I did not attend their meetings and was not a member of the Union. I did not know of any situation that threatened the

operations of the plant, but such a condition might have existed in some departments without my knowledge.

I have had no difficulty in securing all the help I want at the wages being paid by the packing company (Tr. 328).

Mr. BRANDON, witness for respondent, testified:

I have worked for the Charles Wolff Packing Company for twenty years and am now foreman of the casing department (T. 331); No one has ever quit work in my department on account of wages, but there was some complaint about them. If there was any disturbance among the employees that would threaten conditions in the casing department they kept it from me.

I am not a member of the Union, but did hear that the Union was considering some action as to their attitude in regard to it.

There has been no disturbance among the employees that would threaten production in my department.

D. R. HITE, recalled for further cross-examination, testified:

Mr. MCCLAIN: Mr. Hite, in the proceedings before the Court of Industrial Relations in this matter, and I think at the time of the argument, a certain proposition or proposal was presented and
169 discussed by you, a quotation, reference to which occurs on Page 4 of the complainant's brief in this matter before the Supreme Court. Would you state whether that is the sum and substance of that statement or proposal?

A. I would prefer to read this into the record as a statement made by me in the argument before the Court of Industrial Relations after the hearing in the matter of the Complaint of W. E. May, et al. My present remembrance is that this statement was made by me in an argument before the Court of Industrial Relations on or about April 25, 1921, and was substantially as follows: The attorney for the packing Company is authorized to make a proposal to the Court, but it is not prepared to accept the terms of the order of March 21, 1921, making the eight hour day as the basic day, with time and one-fourth for the ninth hour and time and one-half thereafter, but as a counter proposal the Charles Wolff Packing Company proposes to adopt the 48 hour week, and all time employed over 48 hours shall be paid for at the rate of time and one-half; the employees, if working less than 48 hours, shall be paid at the regular schedule for the time actually engaged; but the company does not consent to the fixing of any guarantee of hours per week." And I may add that I was authorized by the manager of the Charles Wolff Packing Company to make that suggestion and proposal.

170 With reference to the proposal of the attorney for the packing company, W. L. HUGGINS, witness for respondent, testified:

A. No, they din't agree to it. Mr. Hite, representing the respondent, made a proposition in his argument which was taken down by the reporter, and if it isn't in the record, it is in existence in the tabulation, in which he made a proposition in regard to the

hours of labor and the guarantee. The order then was finally made wasn't quite his proposition, although it granted some of the things that he suggested. I can't say that there was any agreement on the basic eight hours in any of the departments down there.

Q. With reference to the wage schedule, was there any attempted agreement on that, or was it a disputed fact?

A. The only thing that was agreed upon, as I remember it, was that the women workers should have the same wages as the men for the same class or character of work.

171 And thereupon on the 12th day of December 1921, the commissioner filed in this cause his findings of fact and conclusions of law, as follows:

172 (Caption omitted.)

REPORT OF A. L. NOBLE, COMMISSIONER.

To the Supreme Court:

Your Commissioner to whom the above case was referred for hearing, with power to find and report the facts and conclusions of law, does respectfully report to the Court that after taking oath as such Commissioner he heard all of the testimony and received all of the evidence offered by both the petitioner and respondent, and in making his findings in this report considered all of the evidence introduced on the hearing of the case before the Court of Industrial Relations as disclosed by the transcript of such evidence filed in the case, and offered in evidence by the petitioner.

This transcript was read and considered by your Commissioner and received in evidence under the authority of Section 12 of the Industrial Court Act.

The evidence was heard at Topeka on July 27, 28 and 29, and on August 18, 19, 23, 24, and 25, and the law and facts were argued to the Commissioner at the same place on September 9. Both the petitioner and respondent filed with your Commissioner written requests for both findings of facts and conclusions of law, and such requests are filed by your Commissioner with this report.

Tentative findings and conclusions were submitted to counsel in October, and objections and exceptions made thereto by counsel for both sides. Upon the hearing before your Commissioner

173 with respect to his tentative findings, the respondent filed with your Commissioner a petition with respect to the matter covered by finding of fact No. 12, but your Commissioner took no action with reference to such petition, except to receive the same, and as the Commissioner's tentative finding No. 12 has not been changed and is the same as finding No. 12 herein, such petition of the respondent is reported and returned to the Court with this report for such action thereon as this Honorable Court may find to be just, in view of the evidence and the report of your Commissioner.

All of the exhibits which were received in evidence before your Commissioner are filed also with this report.

Your commissioner respectfully reports that he finds the facts as follows:

1.

The trial and investigation by the Court of Industrial Relations was instituted and held on a complaint in writing by the officers of the local Union at Topeka, of the Amalgamated Meat Cutters' and Butchers Workmen of North America, filed on behalf of the plant employes of the Wolff Packing Company, a corporation owning and operating a meat packing plant at Topeka, Kansas; and such officers and most of the members of such local Union, numbering more than two hundred were employes of the plant.

In entertaining the complaint and ordering the investigation thereunder, the judges of the Industrial Court acted upon the information disclosed by the complaint, and the general knowledge possessed by the members of the Court of industrial conditions pertaining to the packing industry, both in the State and elsewhere.

174 At the time the complaint was filed with the Court of Industrial Relations there was great dissatisfaction among the employes of the Packing Company over therefusal of the company to execute the contract demanded by the Union, and the action of the company in abolishing the bonus and extra pay for overtime and reducing the wages. A strike vote had been taken in the local Union and a decision to submit the controversy to the Industrial Court was adopted as the only alternative to a strike at the plant, and such controversy between the respondent and its employe-s who were members of the Union threatened and endangered the continuity and efficacy of the operations of the plant.

2.

The notice of the investigation and hearing, which was served upon the packing company as provided by law, consisted only of a copy of the complaint, including the exhibit thereto, with notice of the date and place set by the Court for the hearing.

3.

A large amount of oral evidence was taken upon the hearing before the Court of Industrial Relations in March, 1921, and most of such evidence was heard by only two of the three judges of the Court, and a considerable part by only one judge. In the course of the investigation, and as a part thereof a personal visit to the plant and inspection thereof was made by the one judge of the Court who heard all of the evidence, but this was by agreement of the counsel for both sides.

After the oral hearing had been completed, and while the evidence was being transcribed, the two members of the Court who had not heard all of the evidence resigned, and ceased to be members of the Court. Two judges were appointed to fill the vacancies, and

after the evidence had been transcribed it was all read by the new
members of the Court, and the case was thereafter argued by
175 counsel for both sides to the full Court, as then constituted,
without objection. The final order in the case was made by
the full Court. During the hearing of the oral evidence, the at-
tention of the counsel appearing for the respondent was called to
the absence of two of the judges, and he then consented to proceed
with the hearing without their presence; and upon the trial before
your Commissioner the counsel for the respondent agreed that if the
absence of those judges from the hearing were a matter which could
be waived by the parties it had been waived in this case. The
temporary order made on March 21st, was before the evidence had
been fully transcribed, and at a time when the Court was composed
of only two judges, one of whom was one of the new appointees, but
the temporary order was made upon the agreement of the two judges
of the Court.

4.

At the time *of* the complaint was filed there was not, nor has
there since been any contract in the nature of collective bargaining
in existence between the respondent and its employe-s, or the Union.
Such contract had been in force during a part of the year 1920, but
that had expired by limitation of its term on the last day of that
year. That contract fixed a minimum wage scale for the various
employments in the production department of the plant, and also
provided for a bonus of five cents per hour to employe-s after a
specified term of service, and for extra pay for overtime above eight
hours per day, and a guaranty of a certain number of hours of em-
ployment each week. This contract was with the Union, but in
effect was applied by the packing company to all of the employe-s, ex-
cept the office and accounting department.

The Union demanded a renewal of the expired contract, and sub-
mitted to the packing company a new contract covering the year
1921, substantially the same as the expired one. The packing com-
pany replied that they could not renew the contract because the
plant was operating at a loss, and suggested a conference with the
attorney for the packing company. This the committee of
176 the Union declined, and they finally served an ultimatum
on the company that the new contract must be signed, and
the contention of the Union as to the construction of the bonus
clause in the expired contract, which was a matter of dispute, con-
ceded by a certain date. Before the expiration of the time stated
in the ultimatum, and on January 15th, 1921, the packing com-
pany posted a notice to its employe-s to the effect that they should
consult their foreman for new rates of pay that would be effective
beginning January 17th, and that from that date overtime would
not be paid except at the regular rates per hour. Thereupon, a
meeting of the local Union was held, and the officers were author-
ized to file the complaint with the Industrial Court.

5.

On January 17th, the posted notice was put into effect and since that time there has been no bonus paid nor extra pay for overtime. The net change of wages put into effect by the packing company on January 17th, 1921, was slight- beyond the abolishment of the 5 cent per hour bonus and the extra pay for overtime. Some wages were raised, more were unchanged, and the remainder were lowered from 2½% to 14%, making an average reduction in the hourly wage throughout the plant less than a half cent per hour, or not over 2%. Some employe-s are paid more wages than others doing the same work, which proves a source of dissatisfaction to the latter. In order to give the workers reasonably steady employment it is daily necessary to shift some of them from one job, which would be finished for the day, to other work in the plant for which a different wage is commonly paid, and, it being impracticable to divide the time and rate of pay of the men, they would be paid for all their time on the wage basis of the primary job. The abolishment of extra pay for overtime was the chief source of dissatisfaction expressed by the workers.

177 By reason of the limited capacity of the plant, especially the refrigeration and storage, and the limited market for live stock at Topeka, it is impracticable to operate this plant with shifts of workmen, or to use more than one set or shift of workers in its general operation. The plant is the only quantity purchaser, at Topeka, of live stock for killing, and except to a limited extenet, the packing company does not have control or advance notice of the quantity of live stock which will be delivered or when. It is also practically necessary that the plant purchase all of the live stock offered and delivered in order to hold the market, the purchases being made on the basis as to price of the competitive market at Kansas City. It is also practically necessary that all live stock purchased be killed within a limited time after it is received at the yeards, and when killed it is necessary that the operations continue without cessation until the meat is placed in refrigeration. Therefore, on some days the operation of the greater part of the plant will necessarily occupy only a few hours, and on other days more than eight or even nine hours, depending largely upon the amount of live stock on hand for killing, and the condition is one that cannot practically be controlled by the respondent. The most arduous labor, that of the killing gang working on what is spoken of in the evidence as the "chain" is not continued more than eight hours a day but the extra time is generally consumed in the cleaning up work after the killing is over. The operation of the plant would not afford sufficient working hours per week to hold the men if those in the killing gang were not afforded other work in the plant besides the actual killing. Since the abolishment of extra pay for time over eight hours, the number of hours of work per day at the plant has not changed materially from those which obtained during the period covered by the expired contract.

178 Therefore the Commissioner finds that the hours of em-
ployment of the workers generally in the plant are governe
by conditions over which the respondent has not practical contr
and that the only effect of the establishment of a basic eight ho
day in the court's order would be upon the rate of wages required
be paid; that however it might be regarded in other cases, the bas
day in this order is a wage provision rather than a working co
dition.

7.

Taking the period from January 17th to April 30th, 1921, as
basis of computation, the effect of the Court's order of May 2n
1921, would be to increase the amount of the respondent's pay r
for that period over the amount it actually did pay its workers a
fected by the order by the sum of $7,099.68, or an average
$2,028.48 per month, or $24,341.76 per annum if the period wou
represent the average operations for the year. This would amou
to an increase in the pay roll of the plant of 7 2/10 per cent,
which rate of increase 4 8/10 per cent would be caused by the pr
vision for a basic day and extra pay for overtime, and only 2 4/
per cent by the increase of the direct wage scale. It is evident, ho
ever, that during the period in question the plant has not be
operated to its full capacity. The total sales during the year endi
October 30th, 1920, were $7,440,725, while those for the subsequ
six months expiring April 30th, 1921, were only $2,282,736. T
capacity of the plant reduced to a hog killing basis is 5,000 ho
per week whereas only about 2,800 per week was the average f
the six months' period.

8.

The paid up capital stock of the respondent company is $60
000.00, almost all of which is owned by a Delaware corporation wi
its main offices in Chicago, Illinois, the Allied Packers, which eith
controls or operates six other meat packing plants situated in easte
cities and in Canada. The Wolff Company is operated a
179 financed as a separate entity, has its own officers and accou
ing and sales departments, as well as production, but is c
trolled in its operations by the Allied Packers through control of
board of directors. The activities of the Allied Packers consist in
management and co-ordination of the operations of the various all
plants, carried on through the central office in Chicago. The W
Company is financed almost wholly through the central office, wh
borrows and supplies to it the funds required for its operations. T
central office also maintains sales agencies through which the surp
products of this and the other plants are marketed. The larger p
of the product of the Wolff Company is sold through its own s
organization, and collections therefor are made by it direct, bu
smaller part is ordered from time to time through the central of
for export or otherwise. Such transactions are made on the basi
the market price, but settlements are made only on the books,

through the central office. Likewise, when the demands of the Wolff Company require some product which its does not have on hand for delivery, it is supplied to the Wolff Company from another of the allied plants through the central office, and that transaction is settled on the books by a charge to the Wolff Company. All transactions between the central office and the Wolff Company are carried on the books of the Wolff Company in what is called the current account, and periodically the Wolff Company is charged on such account with current insterest paid on obligations incurred by the central office on behalf of the Wolff Company, and also with a certain arbitrary portion of the overhead and administration expenses and of the pay roll of the central office. The Allied Packers has a large bonded indebtedness, and a certain arbitrary portion of the interest on such bonded debt, in fact 2 1/10 per cent of the whole interest paid is also charged periodically to the Wolff Company in such current account.

80 It is suggested in the evidence that this co-ordination of control and operation is a distinct financial advantage to the Wolff Company in furnishing a market for its surplus product and finding necessary credit for its operations, but there is no evidence from which to estimate the value, if any, to the Wolff Company of such service, and for the purpose of this case, of determining whether the owners are receiving a fair return on their investment, the administrative and central office expense must be regarded as an expense of the Allied Packers in realizing to itself as a stockholder the benefits of the operations of the Wolff Company, rather than an operating expense of the Wolff Company, and neither that nor the bond interest charged against the local company should be taken into consideration in determining the profits and losses of the Wolff Company, and whether a fair return to the owners on the capital invested would be prevented by enforcement of the order in question.

Also, under instructions from the central office, a reserve for depreciation of the plant, machinery and equipment is set up periodically on the books of the Wolff Company, and charged to cost of operation. The percentages on which this reserve is computed are not questioned, but they are based, not upon actual cost of the plant and equipment, put upon an appraisal made in December, 1919, at about the peak of high prices, as the replacement cost, which was approximately three times the actual cost or pre war value. This reserve does not represent actual replacements made but only a fund held for the purpose when needed, and while it may be conservative business policy to estimate the same at the going cost, yet it is excessive in figuring profit and loss on current operation of the plant, and these reserves for depreciation should be divided by three in computing the operating expense for profit and loss. The Allied Packers paid a premium of 30% over par value for its stock in the Wolff Company, the purchase having been made in the Fall of 1919.

181 9.

The fiscal year of the respondent expires on the 31st of Octobe
The evidence shows the financial results of the operation of the pla
for the year ending on October 31st, 1920, and for six months' peri
from that time on to April 30th, 1921, and of the divisions of t
latter period, November 1st, 1920 to January 17th, 1921, and Ja
uary 17th, 1921 to April 30th, 1921, and also for the five week
period from March 26th, 1921 to April 30th, 1921.

Applying the rules of finding No. 8 to such evidence by cutti
out the central office administrative and pay roll expense, and bo
interest, and reducing the reserves for depreciation, the operation
the Wolff Company for the year ending October 31st, 1920, result
in a loss to the company of $99,848.23 and from that date to Ap
30th, 1921, in a loss of $86,462.50. Dividing the latter loss betwe
the two periods mentioned:

Loss from Nov. 1st, 1920, to Jan. 17th, 1921.....	$63,805.3
Loss from Jan. 17th, 1921, to April 30th, 1921.....	24,116.8

The addition of these sums does not exactly correspond with t
total given above for six months, but they were arrived at from di
ferent basis of figuring, and the difference is not material.

For the five weeks' period from March 26th, 1921, to April 30
1921, there was a profit of $4,793.90. The improvement in th
results of the operation of the plant is not entirely progressive, ho
ever. There were losses in November and December, a profit
January, loss in February and profit in March and April. T
April operations, if taken as a test or basis for figuring, would sh
a reasonable return on the capital invested of $600,000.00, but th
is too short a time for a proper basis, and the fiscal year should
considered. All of the April profit is accounted for by the collect
during the month of an adjustment of $5,163.83 on an account wh
had evidently been charged off as loss at an earlier date. The fi
half of the fiscal year ending October 31, 1920, showed a small pro
but the latter half such a loss as to make the year's business as sta
above.

182 These figures are arrived at by starting with the invento
of products and live stock on hand at the beginning at t
term, and adding thereto the amount paid ut for products and l
stock, and all the operating expenses for period, then deducti
the total of sales during the period and th ventory of products
hand at the end. These inventories are based on the market pr
at the time they were taken, and as stocks on hand of from $3
000.00 to $400,000.00 were carried at all times, it is evident th
variations in the market price of packing house products from ti
to time must have entered more or less into the profit and loss s
counts.

The evidence shows that from January 1st, 1920, to January 1
1921, there was an average reduction of twenty per cent in t
wholesale price of packing house products. It is assumed that f
the purposes of this case the interests of the workmen should not

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affected by losses of the company occasioned by the mere loss in value of stocks on hand, but such losses are not sufficient to absorb the entire loss in operation of the plant as above found, and it is found from all evidence that for more than two years immediately preceding the date of the order of the industrial court, the business and plant of the respondent has been operated at a loss to the owners who have received no return at all from the capital invested. While charges made on the books for central office expenses and bond interest are items which might be classed in the nature of dividends to the Allied Packers, yet none of these have been paid nor earned, and they merely increase the debit balance of the Wolff Company on the current account from time to time. There have been no dividends declared or paid on the stock of the packing company for at least three years.

10.

The wages being paid by the respondent to its workmen are less than the schedule paid for the larger packing houses at Kansas City and Wichita, but somewhat larger than those paid by a smaller plant at Leavenworth.

11.

The orders of the Court of Industrial Relations of March 21st, and May 2nd, were both served upon the respondent as required by the law, and neither order has been complied with or obeyed by the respondent, except insofar as the same was being done at the time the complaint was filed. In the case of about half of the employes to whom the order applies the scale of wages being paid was not changed by the order, and it has been the practice of the respondent to make no distinction in wages paid between members of the Union and the employes not organized. There is no proof that paragraph 4 of the Court's order has been violated by the respondent.

12.

There are only about twelve women and girls among the employes affected by the order, and for some part of their time when they work by the hour they do not receive the same wages as the men employed likewise, but the work of the women and girls is largely piece work in which no distinction is made in the wages between men and women. The evidence does not disclose the exact effect which the enforcement of paragraph 9 of the order would have upon the pay roll. It would be an increase, but insignificant amount. Counsel for respondent agreed on the hearing before the Industrial Court that the order might give the same wage to women as to men in cases where the women did the same amount of work as the men. Such an order when applied to the hourly wage scale would be impractical and impossible of enforcement, and paragraph 9 of the order made was the only practical one which could be made on the subject. The evidence taken before

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the Commissioner shows that two of the women employes do
much work by the hour as men similarly employed and
184 does not appear that there are any exceptions to that ru
Therefore that paragraph of the Court's order was reas
able, and it had not been complied with by the respondent up
the time of the hearing before your commissioner.

13.

There is no evidence from which a definite deduction can
made of why the business of the respondent has been thus u
profitable for three years. There is reference to general unfav
able market conditions. The Allied Packers purchased its cont
of the capital stock in the Fall of 1919, but the plant had opera
at a loss for the year before that purchase. Neither the losses
operation, nor the reductions in operations during the six mon
ending on April 30th, 1921, were caused by any inability of t
respondent to secure sufficient workmen at the wages paid.

The wages which have been paid at the plant since Janu
17th, 1921, are as high as those paid before the contract with t
Union of May 10th, 1920, which expired on December 31st, of t
year, and there was no bonus, basic day or extra pay for overti
before that contract. So that the action of the packing comp
on January 17th, 1921, amounted practically to a return to t
conditions as they existed prior to May 10th, 1920. It also d
away with any formal recognition of the Union by the respond
and that fact is a source of much dissatisfaction disclosed in t
evidence, which was confined on the part of the plaintiff, so far
employe witnesses is concerned, to the Union membership.

The losses of the packing company in the operation of its pl
have been heavier during the existence of the working contract
May 10th, 1920, than at any other period, and the losses in ope
tion, so far as amount is concerned, may be accounted for in t
combination of the depreciation in market value of stocks on ha
and the bonus and extra pay for overtime covered by that c
tract.

185 Since January 1st, 1921, the policy of the superintend
of the plant has been to require more work or harder w
from the employes. The financial results from the previous op
tions afford reason for the demand of the management for gre
efficiency but, as the change in policy was nearly concurrent w
the expiration of the Union's contract and the company's ref
to renew it, the loss to the workers of what they conceived to be
benefit of their organization became so apparent to them that, in
absence of any knowledge on their part of the conditions nec
tating the change, their dissatisfaction was inevitable.

Whose fault it was that a full understanding was not arrived
between the Union and the Company or whether that would h
been possible, is immaterial to this case, but in the absence of a
showing in the evidence of mismanagement or other conditi
which could and should be corrected accounting for the losses of t

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mpany in operation, it is found by the Commissioner that the ant could not operate without loss on the basis of the basic day d increase of wages provided in the order of the Industrial Court.

14.

On the hearing before the Court of Industrial Relations the re-ondent did not introduce any detail evidence of the financial sults of the operation of the plant, and the only evidence of losses operation was the oral testimony of the President of the Com-ny that there was a loss of over $100,000.00 in the fiscal year end-g October 31st, 1920.

That evidence was somewhat qualified by an admission of counsel r the respondent made in the same connection that the Wolff ant may have been charged by the central office of the Allied Pack-s with a proportion of losses suffered by other packing plants in e alliance, (pp. 577-580 transcript of evidence before the Court of Industrial Relations).

This admission was not justified in the facts unless such losses are reflected in the central office administrative charges retofore mentioned in these findings, and which are eliminated these findings as operating expenses of the Wo-ff plant. On that aring the respondent offered the court examination of its books the court's accountant, and it was then announced by the court at such examination would be made, but it seems that by reason a change in incumbency of the position of accountant for that urt pending its consideration of this case, such examination was t made, and was perhaps impractical within the time taken by the urt for consideration of the case.

So the court of Industrial Relations did not have any conclusive detailed evidence of the financial results of the recent operations the plant, nor of the effect which its order would have thereon at e time the order in question was made.

The detail of the evidence received by the Commissioner of the erations for the fiscal year ending October 31st, 1920, was the itten report of expert accountants made in November and Decem-r 1920 from examination of the books of the Company not how-er, for the purpose of this proceeding. This report was identified d explained in some detail by the expert accountant under whose rection the accounting was made and the report written, who tified that it was a true summary and reflection of the books of e Wolff Company, but that as to operations, that is the profit and s account, he had not verified the correctness of the company's oks in respect to every item. The books of the packing company re examined to some extent by the accountant for the Court in nnection with this written report. This accountant's report was enuously objected to as to competency.

The operations of the plant since October 31st, 1920, were shown income and expense statements and balance sheets made from the oks and identified and explained by the office manager, with op-

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portunity to the Court's accountant of comparison with and examination of the books of the company.

187 In this way the Commissioner has the benefit of the detail from the books of the packing company which were not furnished to the court on its investigation, and definite information of the exact effect which the order would have upon the operations up to the date of the final order, which the Industrial Court did not have.

188 Your Commissioner also submits the following as his conclusions of law from the facts found.

Conclusions of Law.

1.

Under the complaint and notice on which the hearing and investigation was made by the Industrial Court the only controversy which that court had jurisdiction to entertain had to do with the subject of wages, and those of a basic day and extra pay for overtime and a guaranty of hours per week of employment, if they be regarded as working conditions as well as wage questions. Section 8 of the law sets forth generally the scope of the jurisdiction of the court when invoked by the proper complaint or assumed upon its own initiative, and is not expressed nor was it intended by the legislature, as giving additional authority to be exercised upon the making and serving of any order in any case.

No order of the Industrial Court is authorized except upon notice whether the investigation be instituted by complaint to the court or upon the court's own initiative. Section 10 of the act makes notice jurisdictional, and while it provides that it shall be such notice as the court shall deem necessary, yet, in view of the further specification of the manner of service and the contents of the notice it is apparent that the only matter in respect to notice that is left to the discretion of the court is the time of notice, and that the interested parties must have notice in advance of the hearing of the scope of the investigation to be made.

The complaint, a copy of which constituted the notice served, did not cover the subject of any working conditions, unless the establishment of a basic day and guarantee of hours of employment per week be such. It did set forth the expired contract

189 which covered by its terms some working conditions as well as wages, but such contract is included in the complaint for the purpose only of presenting the controversy which had arisen over the construction of the bonus clause therein, and of invoking the enforcement of that clause according to the complainants' interpretation. That was not covered by the order of the Industrial Court and is not involved in this suit.

Under the findings of fact the subjects of a basic day and guarantee of hours of employment per week are wage conditions rather than working conditions, in this case, but, however these may be classified, the complaint makes no reference to any other working condition

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nor to working conditions generally, and seeks only for an order establishing reasonable wages and compelling the respondent to contract for and pay the same, and the scope of the inquiry was not extended beyond those matters by any agreement or conduct of the respondent. Hence those portions of the order of the Industrial Court contained in the paragraphs 1, 5, 6, 7, 8, 10, 12, 13 and 16, the Court of Industrial Relations did not have jurisdiction to make, and the order is not enforceable with respect thereto.

2.

It is contended by the respondent that at the time the Industrial Court entertained the complaint and ordered a hearing thereon, there was no such controversy between the parties as may have affected the continuity or efficiency of the packing industry so as to endanger the public peace or threaten the public health, and that consequently the jurisdictional condition did not exist which could authorize the investigation by the court.

The Law, Section 7 of the industrial court act, makes that a matter to be determined by the discretion of the court as a preliminary, requisite to assuming jurisdiction to enter upon the investigation, and provides that the hearing having been entered upon and brought to a conclusion, the court shall make and serve its findings. It is not contemplated by the law that the seriousness of the controversy, that is, the jurisdictional condition, should be an issue to be tried at the hearing.

The end and purpose of the law seems to be primarily the protection of the general public from the results of controversies arising between employers and employes and if jurisdiction of the court could not be assumed until strikes or shut-outs had occur-ed, or other overt acts had been committed imminently threatening the public peace, or if the question of the soundness of the courts discretion in entertaining the complaint and ordering the investigation were a matter of judicial review in the light of subsequent conditions which the purpose of the law is to improve, the ends and aims of the law and its efficiency would be seriously impaired if not entirely defeated.

It is concluded, therefore, that the Industrial Court was justified in acting upon the knowledge of its members of general as well as local industrial conditions, however acquired, as well as ex-parte information on the subject of the particular strife and controversy, in assuming its jurisdiction in this case, and in as much as the good faith of the members of the court is not questioned, the subject is not open to review in this proceeding

3.

There was a full membership of the court acting in receiving the complaint and ordering the investigation and issuing the notice thereof. There was also a full membership of the court in consider-

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ing the evidence and making the order of May 2nd. The act of t
legislature does not designate a quorum which shall constitute t
court for the transaction of business, but expressly leaves in the co
itself full power to regulate and govern its proceeding, save only
to the rules of evidence in taking of testimony.

191 The court might have appointed a Commissioner to take
evidence, in which event the members would only have re
the transcript, and there is nothing in the law to prevent such Co
missioner being from the membership of the Court. In this ca
the Industrial Court did informally appoint the pres-ding jud
to take and hear the evidence, and it was all transcribed and read
the other two judges.

The functions of the court are not judicial in their nature, a
the rules governing courts of justice in requiring that the jud
rendering the decision must hear the testimony from the lips
the witness do not apply, and if there was any irregularity in t
proceedings as noted in the findings of fact, the same could
and was waived by the respondent in the manner noted in t
findings.

The temporary order made by the Industrial Court on March 2
relates to wages alone as found in the facts, and in view of the n
conclusion of law it is held to have been unreasonable, and it
comes unnecessary to pass upon the power of the two judges to ma
an order in the circumstances under which such temporary or
was made.

4.

As to those paragraphs of the order of May 2nd, numbered 3,
14, 15, 17, and 19, directly affecting the wages to be paid work
the effect of the order of the Court of Industrial Relations, as fou
in the facts, would necessarily be to increase the loss at which t
respondent's plant had been and was being operated at the ti
when the complaint was filed and the order was made, and, to t
small extent of the increase ordered in the pay roll, would pl
the capital invested in the stock of the respondent corporation f
ther from receiving any return to the owners. The tendency
the enforcement of the order would therefore be to deprive t
stockholders of that much property and to hasten the ultimate c
ing of the plant, which is inevitable unless business or operating c
ditions can be improved.

192 The Industrial Court law was enacted for the general w
fare which it was undoubtedly intended by the legislature
promote. Certain conditions are specified as conducive to the p
motion of such welfare, and this amounts to an expression o
purpose of the law to bring about and maintain those conditi
which are, so far as the issues here are concerned, that workers
gaged in the specified industries should receive a fair wage and e
tal invested therein a fair return on the investment. Normally b
conditions must exist or the industry cannot survive, because work
cannot be induced nor compelled to labor for an unfair wage,

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apital cannot be attracted nor held without a fair return. In the ase of public utilities where the law can regulate both the wages paid nd the price at which the product is sold, the purpose of the law, owever difficult the adjustment may be, is, theoretically at least, ully attainable. With those industries, which, though affected with ublic interest, must sell their products in the open market at prices hich cannot be directly regulated by law, the realization of the pur- ose of the law, even theoretically, can only be more or less approxi- nate. But the fact that the objects and purposes of the law may not e fully attained in every instance does not affect the validity of the aw nor its general efficiency.

There is nothing in the act justifying the taking of the property f the employer in one of the designated industries for the purpose f enabling the workmen *of* receive a fairer wage, any more than he taking of fair wages from the workmen to enable the employer o earn a fairer return on his invested capital. The object of the aw is evidently to prevent an unfair and lop-sided condition, and eyond that there is no intention evident to change the operation of he law of supply and demand, either as to the price of labor or prod- uct, and in the regulation aimed at the interest of the public 93 in having the industry continously operated and its output produced and placed on the market is made paramount. If he respondent were making a substantial return on its investment in perating this plant, though not a fair one considering the going nterest rates at the times, and were not paying fair wages to its orkmen, the situation would be one for the Industrial Court to qualize in the interest of the general public, but where, as in this ase, the respondent is getting no return whatever on its investment, nd the workers are receiving wages, not a- high as are paid in the rger packing houses, but equal to those paid a year before when the st of living was somewhat higher, an increase is not justified nor uthorized by the Industrial court law and the execution of those aragraphs of the order would be unreasonable and should not be nforced.

5.

As to paragraph number 2 of the order of the court of Industrial elations, it is found that the order has been complied with, as the equirement was in operation at the plant at the time the com- aint was filed and at all times since, and the plaintiff is not en- tled to a writ of mandamus to enforce that part of the order.

6.

As to paragraph number 4 of the order, it is not found that the equirement has been violated, but the order is too indefinite, stand- g by itself, to be capable of enforcement by mandamus, and no rit should issue for that paragraph alone; and there is nothing in aragraph number 18 requiring enforcement.

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7.

Paragraph number 9 of the order of the Industrial Court w
within its jurisdiction to make, for it not only relates to wages, b
the complaint was specially amended to cover the point by co
sent.

194 The paragraph being reasonable, there is no legal grou
why it should not be enforced except that it is such an i
significant part of an order of which the remaining parts are be
to be either unreasonable or not within the jurisdiction of the co
to make, is such a small part of the substantive matter of the alte
native writ of mandamus, that a peremptory writ should not iss
therefor, unless desired by the court as bearing upon the mat
of costs.

8.

Subject to conclusion of law number 7 above, a peremptory w
should not issue.

195 To this report the plaintiff presented and filed its exce
tions as follows:

196 (Caption omitted.)

EXCEPTIONS TO COMMISSIONER'S REPORT.

Comes now the petitioner and makes and files the following e
ceptions to the report of the Commissioner herein, both as to fa
ings of fact and conclusions of law stated in said report:

197 As to Findings of Fact.

Finding No. 1.—No exceptions.

Finding No. 2.—This finding should contain the further sta
ment: That attached to such complaint as an exhibit thereto w
the original contract which the respondent refused to renew a
over which the controversy arose, the introduction of which co
tract was urged and offered in evidence by the respondent at t
hearing before the Court of Industrial Relations; and the same
also introduced as an exhibit in evidence before the Commission

Finding No. 3.—No exceptions.

Finding No. 4.—This finding should be enlarged so as to incl
all the matters presented by said complaint and the exhibit ther
attached and the matters contained in the respondent's answer,
well as the entire substance of the notice referred to in the la
part of the second paragraph of said finding, which notice was
words and figures as follow:

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"Ex. 'B.' Ex 'A G.'—G. J. H.

Notice.

All employees will please consult their foremen for new rates of y which will be effective beginning Monday 7:00 A. M. Jan- ry 17, 1921.

Notice.

Effective January 17, 1921 overtime will not be paid except at gular rates per hour. The rule of time and a half for overtime hereby abolished. Chas. Wolff Packing Co., by C. W. Sheehan, pt."

Finding No. 5.—This finding of fact is excepted to for the reason at the same is contrary to the evidence in the cause, it appearing Exhibit 4 submitted by the respondent, at the hearing before the Court of Industrial Relations, that the average reduc-
198 tion accomplished by the wages put in effect by respondent on January 17, 1921 was 10.25 per cent reduction over the ge schedule in the expired contract; and it also appearing by e testimony of Charles Wolff before the Court of Industrial Re- ions. (See transcript, p. 719.)

The finding is excepted to for the further reason that it limits the satisfaction of the workers to the abolishment of pay for over- e, while the testimony discloses that almost unanimously the rkers were desirous of an eight hour day without regard to over- e; and that if they worked more than eight hours that it be en care of by overtime penalty. (See abstract of testimony sub- tted herewith, Ex. "B". This abstract is not attached hereto but e testimony therein will be set forth in the general abstract.

Finding No. 6.—

That this finding is excepted to for the reason that it incompletely tes the facts in reference to the matters therein set forth in this; (*a*) That said finding fails to take into consideration that the pondent maintains stockyards at its plant for the purpose of hold- and caring for livestock purchased in the market for slaughter its plant, and feeding facilities therefor, by which it is enbled to ely hold such stock for a reasonable length of time before killed, that the alternative before the Court is whether or not the re- ndent should be required to make reasonable expenditures for ping surplus livestock and distributing the killing thereof, or uld crowd the employes of its plant by working overtime without alty.

(*b*) That said finding fails to take into consideration the fact t the respondent has installed a large refrigerating plant for the e and storage of its product as soon as killed and in any stage of operations.

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(c) That said finding fails to take into consideration the volu
tary offer of the respondent as made in open court at t
199 hearing before the Court of Industrial Relations in wo
and figures as follows, and as was testified to by Mr. Hite b
fore this Commissioner (tr. p. 336), which offer the Industrial Co
made effort to substantially comply with, to-wit:

"The attorney for the packing company is authorized to ma
a proposal to the Court, but it is not prepared to accept the ter
of the order of March 21, 1921, making the eight hour day as t
basic day, with time and one-fourth for the ninth hour and ti
and one-half thereafter, but as a counter proposal the Charles W
Packing Company proposes to adopt the 48 hour week, and all ti
employed over 48 hours shall be paid for at the rate of time a
one-half; the employees, if working less than 48 hours, shall be p
at the regular schedule for the time actually engaged; but the co
pany does not consent to the fixing of any guarantee of hours p
week.

"And I may add that I was authorized by the manager of t
Charles Wolff Packing Company to make that suggestion and p
posal."

(d) That said finding fails to take into consideration the fact t
every other packing plant in the state of Kansas, continuou
operating, does so on a basic eight hour day.

(e) That said finding fails to consider the testimony of e
petent workers of long experience at the respondent's plant to t
effect that the continuous overtime at said plant is due to the meth
of management rather than the necessities of the operation, as d
closed by abstract of such testimony submitted herewith. (T
abstract is not attached hereto but the testimony therein will be
forth in the general abstract.)

(f) That said finding fails to weigh the meager testimony
the respondent as against the uniform testimony of the workers
the effect that the contention as to overtime was for the establi
ment of the eight hour basic day, and for that reason the ma
of overtime is primarily a working condition and not a controv
over wages.

Finding No. 7.—That this finding is excepted to for the rea
that the same fails to take into consideration any readjustment
the working hours and management of the business of the pl
when placed upon an eight hour basis, but such computat
200 is based wholly upon the working of the plant upon
present non-basic day; and for the further reason that
finding, being so based upon the operation of the plant in disre
of said order, is purely speculative and furnished no basis what
for calculation as to the cost of operation under the order of
Court of May 2, 1920; so that such finding wholly ignores the pr
sion of the order of May 2, 1920, calling attention to the sixty
trial period provided therein, in accordance with the provisions
the statute, and for the purpose of actually determining by dem
stration and experience what is now suggested upon a wholly
ferent basis; and it is speculative for the reason that it has not b

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demonstrated that the overtime that may be required to operate the plant could not have been included within the two nine-hour days provided by the order.

Finding No. 8.—There are no specific exceptions to this finding as to matters therein stated; but it should also contain the further finding:

(*a*) That the respondent company's officers and directors are not consulted in the charge of interest on current account, the charge of bond interest, the charge of administrative expense, nor the charge of depreciation; and are not advised and were unable to state the basis upon which the same are made by the Allied Packers against the respondent company; and

(*b*) That the respondent company's returns to the Secretary of State as to its financial condition for the current years 1919 and 1920, are totally at variance with the attempted showing and financial statement in the hearing before the Commissioner—so conflicting was the statement returned for the year 1920, that the respondent found it necessary to file an amended return in order to obviate the damaging effect of the one already on file; but a comparison of this amended return with the return already made and with the return for the year 1919 only emphasizes the extent and limit the respondent would go in order to boster up its alleged claim of losses.

Finding No. 9.—This finding is excepted to in its entirety for the following reasons:

(*a*) That said finding should state that the evidence before the Commissioner conclusively shows the financial relations between the Allied Packers and the respondent company to be of such vague and unsatisfactory nature as to form no basis for a finding of fact or conclusion of law upon the question as to whether or not the said respondent company had been operating at a loss or profit since the Allied Packers acquired control of said respondent company;

(*b*) That said finding should state specifically that the respondent failed to make or offer any financial showing whatsoever as to its alleged operation at a loss for any period whatsoever beyond the mere statement of the president to the effect that during the year 1920 the company had lost over $100,000; that said respondent failed to produce and offer its books of account or other records in evidence; that said respondent failed, neglected or refused to introduce the Ernst & Ernst report, then in its possession and upon which was based its financial status, and served as a foundation for its financial showing before the Commissioner; and that by reason of such failures and omissions of the respondent, the Court of Industrial Relations was warranted in making the order of May 2, 1921 as to wages and working conditions, particularly when its opinion expressly provided for a sixty day trial period in which the respondent could determine whether or not said order and working conditions were unfair or unreasonable.

(*c*) That said finding should further state, that since the respondent had elected to operate from year to year since 1918,

as it claims at a loss, the Court of Industrial Relations was warrante in making said order upon the plain assumption that since the wag schedule provided by it was a substantial decrease over that whic had previously prevailed, the application of the wage schedule an provisions of the order for the sixty day trial period could not ma terially affect the matter of profit or loss of said respondent, and i no event amount to the taking of its property.

(*d*) However, if the Commissioner feels that the evidence intr duced by the respondent at the hearing before him warrants his co sideration upon the question of profit or loss of operation, the should be a finding to the effect that the income and expense exhib offered in evidence on their face disclose that after deducting th improper items arbitrarily charged against the respondent compan by the Allied Packers, the respondent company operated at a pro during the month of January, 1921, and during the period fro March 24 to April 30, 1921—there being no statement covering th period from February 1 to March 24, 1921; and that the alleg losses theretofore existing and as shown by said income and expe statements were substantially balanced by the profits shown by su statements—all of which will more fully appear by inspection of e hibits attached hereto, Exhibit "C." (This exhibit is not attach hereto but the testimony therein will be set forth in the gene abstract.)

203 Finding No. 10.—No exceptions are made to this finding.

Finding No. 11.—No exceptions made to this finding.

Finding No. 12.—No exceptions are made to this finding.

Finding No. 13.—This finding is excepted to in the following pa ticulars:

(*a*) The second paragraph of said finding is excepted to in i entirety for the reason that the same is contrary to the evidence the case; and

(*b*) The third paragraph of said finding is excepted to as bei contrary to the evidence in the case.

Finding No. 14.—The first two paragraphs of this finding are n excepted to, but the third paragraph is excepted to wherein the sta ment is made that the books of the respondent company were offe for examination to the Court's accountant. The fact being th the payrolls were brought to the Supreme Court Room by t

204 respondent, and the Court of Industrial Relations was i formed that said payrolls were down there in case it want to examine them, but such examination was made unnecessary reason of the testimony of the president, Charles Wolff, in regard the wage schedules then in force.

The fourth paragraph of said finding is not excepted to as sta but should contain the additional statement that the opinion of t Court specifically called the attention of the respondent to the six day trial period of its order under the law.

The last paragraph of this finding is excepted to for the reason th it is contrary to the evidence in the case, in this:

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(*a*) That the income and expense statements submitted by the respondent in evidence before the Commissioner were incorrect and each one thereof contained improper items of expense;

(*b*) That the periods covered by said statements were selected by the respondent in making said offer; and

(*c*) That it was impossible for the Court's accountant, or any other accountant, to verify such statements in preparation for or during the reasonable period of the hearing before the Commissioner.

Findings Generally.—The petitioner excepts generally to the findings of the Commissioner herein for the reason that the same does not contain a finding, either in whole or in part, upon the facts referred to in Paragraph VII of the petitioner's requested findings submitted to the Commissioner, which requested finding is based upon the uncontradicted evidence in the case, and involves the fundamental principles of the application of the Industrial Court Act.

The petitioner further excepts generally to the report of the Commissioner for the reason that said report fails to contain a finding upon the matters and things suggested in the petitioner's finding No. XIX.

The petitioner further excepts generally to the report of the Commissioner for the reason that said report does not contain a finding covering the matters and things suggested in petitioner's requested finding No. XX.

The petitioner further excepts generally to the report of the Commissioner for the reason that said report does not contain a finding covering the matters and things suggested in petitioner's requested finding No. XXI.

The petitioner further excepts generally to the report of the Commissioner for the reason that said report does not contain a finding covering the matters and things suggested in petitioner's requested finding No. XXII.

The petitioner further excepts generally to the report of the Commissioner for the reason that said report does not contain a finding covering the matters and things suggested in petitioner's requested finding No. XXIII.

The petitioner further excepts generally to the report of the Commissioner for the reason that said report does not contain a finding covering the matters and things suggested in petitioner's requested finding No. XXVI, paragraphs three and four.

The petitioner further excepts generally to the report of the Commissioner for the reason that said report does not contain a finding covering the matters and things suggested in petitioner's requested finding No. XXVII.

Exceptions as to Conclusions of Law.

The petitioner makes and files its exceptions to the conclusions of law of the Commissioner herein for the following reasons and upon the following grounds:

Conclusion No. 1.—This conclusion is necessarily an error of la for the reason that it proceeds upon an erroneous state of facts, t wit: It states and reiterates throughout the fact that the only questi investigated by the Court had to do with wages; but an examinati of the complaint will disclose that although the question of the wa scale was the primary cause of dissatisfaction (for the wage is ever thing to the worker), it also shows that the basis of the entire co troversy was the failure and refusal of the Wolff Packing Compa to renew the contract that expired at the conclusion of the ye 1920—a copy of which was attached to the complaint and serv upon the respondent. Furthermore, and on page 4 of said complai there is used this specific language:

"that under the terms of the employment of the members of s local union, as expressed in the said contract, the basic day's wo was eight hours, with guaranteed time of forty hours per week the regular rate set out in the schedules which were a part of said co tract, and also overtime at the rate of time and one-half after eig hours; that under the notice of reduction wages given by respond herein referred to, all allowances for overtime and all guarant of stated time per week have sought to be abrogated by the respo ent, and thereby the basic day of eight hours' work per day has be also changed and abrogated, but that there is now no stated ti constituting the basic day of work under the present practices of t respondent";

In addition to this the prayer of the petition—while technic forming no part of the pleading, contains among other things t statement:

"Wherefore, the complainants pray that this Court take juris tion of said controversy; that they enter upon a full investigation the dispute and controversy existing between said respondent a these complainants";

And finally, to show the scope of the investigation we c
207 the Commissioner's attention to the language of the respo ent's counsel upon the hearing before the Court of Indust Relations (tr. 526-527), set out by exhibit attached hereto (t exhibit is not attached hereto but the testimony therein will be forth in the general abstract), wherein he insists, after a collo between and among the attorneys and members of the Court, tha was necessary to have this contract in evidence in order to have f knowledge of all the facts and circumstances surrounding the co troversy.

This conclusion is further erroneous in law in that it undertak to limit and restrict the plain and obvious purposes of the law defining the scope of inquiry of the Court of Industrial Relations.

The regularity of the hearing depended upon two things: Fir the jurisdiction of the Court over the subject matter; and seco notice to the respondent. As to the first, the act speaks for its and as to the second, when we consider the language of the co

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laint, attached to which was the contract, and both of which were erved upon the respondent, it was charged with full knowledge and otice of every essential phase of the inquiry regarding the con-roversy growing out of the repudiation, or rather the refusal to re-ew this contract. It would seem that further comment is begging he question and that the Commissioner is entirely wrong as to this onclusion.

Conclusion No. 2.—Inasmuch as this conclusion simply states the anifest jurisdiction and scope of the Industrial Court, together with uch matters as courts generally have a right to take cognizance of, o exception is made thereto. Bunting v. Oregon, 243 U. S. 426, p. 438.

Conclusion No. 3.—There is no exception to this conclusion except s to the first and second paragraphs thereof; but as to the third para-raph, exception is taken, which will be discussed under the next heading.

908 Conclusion No. 4.—This conclusion is excepted to for the reason that it is based upon erroneous findings of fact as here-fore pointed out, or rather attempted findings of fact from evidence oming clearly within the prohibitions of the following cases:

State vs. Railway, 76 Kan., Op. 500.
Knoxville vs. Knoxville Water Co., 212 U. S. 1, 16, 18.
Wilcox vs. Consolidated Gas Co., 212 U. S. 19, 51, 54.
Railway vs. North Dakota, 216 U. S. 579; 236 U. S. 585.
Gas Co. vs. Lincoln, 250 U. S. 256.

Conclusion No. 5.—No exceptions to this.

Conclusion No. 6.—No exceptions.

Conclusion No. 7.—This is excepted to for the reason that it is an ntegral and important (to the women affected) part of the order ought to be enforced; and incidentally it may be stated that up to he time of the hearing, notwithstanding the agreement of the re-pondent, it had not been put into force and effect.

Exceptions Generally.—The petitioner excepts generally to the pirit and substance of the conclusions already excepted to for the ollowing reasons:

First, because such general conclusions are not supported by find-ngs of fact upon either conclusive or convincing evidence; but on he contrary are based upon findings from evidence so unsatisfactory, peculative and contradictory as not to overcome the prima facie fair-ess and reasonableness of the order in question;

Second, because such conclusions generally are opposed to the spirit and purpose of the Industrial Court Act and its humane 909 application to the industrial relationship disclosed in this case; and

Third, because the conclusions generally are at variance with the ecisions of the Supreme Court of the State of Kansas and the de-sions of the Supreme Court of the United States upon the questions nvolved.

Attached hereto are exhibits in the following order, and recall to he Commissioner the evidence in the case upon the following sub-jects:

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First, the showing presented to the Industrial Court upon the pleadings and by the agreements of the parties, Exhibits A-1, A-2, A-3, A-4. (*)

Second, extracts from the testimony of the workers in the hearing before the Commissioner to the effect that the eight hour basic day was a working condition and not a wage question, Exhibits B-1, B-2, B-3, B-4, B-5(*); and

Third, showing from the respondent's own exhibits upon the question of income and expense and to the effect that there was no substantial loss in operation at the time the order was made, Exhibits C-1, C-2(*); all of which is respectfully submitted. Baxter D. McClain, Counsel for the Court of Industrial Relations.

210 And thereupon at the filing of said report, the defendant presented and filed its exceptions to said report, as follows:

211 (Caption omitted.)

EXCEPTIONS OF THE CHAS. WOLFF PACKING COMPANY TO THE TENTATIVE REPORT OF A. L. NOBLE, ESQ. COMMISSIONER.

The Chas. Wolff Packing Company, respondent herein, respectfully excepts to the following portions of the tentative report submitted by the Commissioner herein, to-wit:

(1) To that part of finding #8, appearing on page seven of the typewritten copy of said report, in which the Commissioner finds that the administrative and central office expense charged against and come in the accounts of the respondent "must be regarded as an expense of the Allied Packers in realizing to itself as a stockholder the benefits of the operations of the Wolff Company, rather than an operating expense of the Wolff Company, and neither that nor the interest charged against the local Company should be taken into consideration in determining the profits and losses of the Wolff Company, and whether a fair return to the owners on the capital invested would be prevented by enforcement of the order in question."

212 For ground of this exception the respondent says that the foregoing conclusion of the Commissioner is not supported by the testimony which shows that distinct advantages accrued to the local plant justifying such changes; and, because the propriety of the expenditures actually made in good faith with the consent of the stockholders in the regular conduct of the corporate business cannot be questioned in a proceeding of this character as the business management of the corporate affairs of the respondent necessarily must be left to the discretion of its stockholders and managers. Furthermore there is no evidence justifying the conclusion that such

(*) These exhibits are not attached hereto but the testimony therein will be set forth in the general abstract.

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harges were considered or treated by the Allied Packers as income
n the nature of stockholders benefits, and the respondent excepts
enerally to such conclusion of fact on the ground that it is not
ustained by any evidence but is contrary to the evidence.

(2) To that part of finding #8, appearing on pages seven and
ight of the typewritten copy of the tentative report, concerning the
epreciation charged against income upon the books of the respond-
nt, wherein the Commissioner finds that the depreciation actually
ppearing upon the books of the respondent should be divided by
hree incomputing the operating expense for the purpose of ascertain-
ng the profit or loss.

As ground for this exception the respondent says that the evi-
ence fairly shows that the percentages and factors used in arriving
t the depreciation periodically charged upon the books of the
espondent against income are fair and reasonable, and the evidence
lso fairly shows that the fair and reasonable value of respondent's
apital assets at the time of the hearing before the Court of In-
ustrial Relations and at the time of the hearing before the Com-
issioner was $1,000,000.00, which compared with the appraisal
f the American Apraisal Company, upon which the repreciation is
ased, shows a difference only of about twenty per-cent; that is to
ay, that the fair value of the property as shown by the testimony
s about $250,000.00 less than the sound value as carried on the
books of the Company as a result of the appraisal by the
213 American Apraisal Company. From this it follows that the
depreciation charged upon the books of the Company against
ncome should not be deminished by 66 2/3% as found by the Com-
issioner, but by not more than one-fifth.

Generally the respondent excepts to said portion of finding #8
ecause it is contrary to the evidence and is not sustained by any
ompetent testimony.

(3) Accordingly, the respondent excepts to so much of finding
9 as may be affected by its exception to those parts of finding #8
t out in these exceptions.

(4) To that part of finding #14 which relates to the failure of
he Court of Industrial Relations to examine the respondent's books
ith a view of determining whether or not it had sustained the losses
leged in its answer, because the evidence shows that the failure
f the Court of Industrial Relations to make an examination of the
oks and accounts of the respondent was not the fault of the
spondent but was due to the neglect of the Court of Industrial Re-
tions in carrying out its agreement made with counsel for the
spondent that it would make such examination of the books,
counts and papers, and cause a report of such examination to be
ade and submitted to the respondent, with opportunity for the
spondent to cross examine the accountant upon such statement; that
e finding that "such examination was impracticable within the
me" is not sustained by the evidence, but is contrary thereto; that
o legal reason exists or existed for the failure of the Court of In-
strial Relations to carry out its agreement with the respondent be-

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fore making any orders affecting the respondent's business a
affairs and based upon the proceedings then pending. And t
respondent respectfully asks that the Commissioner find as a fact t
the presiding Judges of the Court of Industrial Relations, dur
the course of the hearing, agreed with counsel for the respond
that an examination would be made of the respondent's boo
accounts and papers for the purpose of ascertaining the fact whet
or not the respondent was operating at a loss as alleged in its answ
that the report of the accountant of the Court of Indust
214 Relations of such examination would be submitted to t
respondent for examination and the cross examination of t
accountant, if desired; and that the respondent's books, papers a
accounts were open to such examination during the said hearing a
afterward; that such agreement was not carried out by the Cour
Industrial Relations and the orders of March 21, 1921, and May
1921, were made by said Court of Industrial Relations without h
ing secured the information open to the Court to be secured un
said agreement.

(5) That part of conclusion of law #2, holding and deciding t
the existence of an emergency sufficient to justify the exertion
jurisdiction by the Court of Industrial Relations is to be determi
at the discretion of the Court and that the statute does not c
template that the existence of an emergency sufficient to justify
interference in the management and affairs of one of the enumera
industries is not to be tried as an issue of fact at the hearing.

As ground for this exception the respondent respectfully says t
such an interpretation of the Industrial Court act is not justified
its language and if sustained would confer upon the Court of I
dustrial Relations jurisdiction of all wage controversies, regardles
conditions existing in the industry, and regardless of the effect
such controversy upon the public safety or the continuity
operation of the enumerated industry; that the statute contempla
that only controversies of a certain character and conditioned
certain facts should be cognizable in this tribunal; that such tribu
has no judicial power and its authority depends upon the existenc
certain facts and not upon the discretion of the tribunal its
Otherwise the language of the statute is rendered inoperative a
without meaning.

Included in this exception is that part of conclusion of law #
finding that the Industrial Court was justified in acting upon
knowledge of its members of general and local industrial conditi
however acquired, provided members of the Court acted in g
faith. As ground for this further exception respondent respectf
shows that if such holding is sustained the Court of Indust
Relations would be authorized to make investigation upon
215 own initiative, without giving the notice required by Sec.
The provision in this section that "before any * * *
investigation shall be held notice containing the substance of t
matter to be investigated must be given to the parties interest
means that if the Court has information from any source of c
troversy or dispute the investigation contemplated is whether or

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ch controversy or dispute may endanger the public peace. If this nclusion is correct then the question whether a controversy is of ch consequence as to endanger the public peace creates an issue fact to be investigated like any other issue of fact.

(6) That part of conclusion of law #3, in the typewritten copy the Commissioner's report, concerning the power of a less number judges than is required by statute to act, and the number of dges that shall constitute a quorum, and holding and deciding that e provision of Sec. 5 authorizing the Court to adopt all reasonable d proper rules to govern its procedings is sufficient to authorize s than the whole number of judges to make orders; and also hold- g and deciding that the Court might have appointed a Commis- oner to take all of the evidence, and that in such case the Court it- lf could have determined the question before it by reading a tran- ript of the evidence taken before the Commissioner.

The respondent submits that this holding violates the general rule r the construction and interpretation of statutes. Sec. 22 of the dustrial Court act applies specifically to the matter of the appoint- ent of a Commissioner. It reads:

"Whenever deemed necessary by the Court of Industrial Relations, e court may appoint such person, or persons, having a technical nowledge of bookkeeping, engineering, or other technical subjects volved in any inquiry in which the Court is engaged, as the ommissioner for the purpose of taking evidence with relation to ch subject. Such Commissioner when appointed shall take an oath well and faithfully perform the duties imposed upon him, and all thereafter have the same power to administer oaths, compel the production of evidence, and the attendance of witnesses as the said Court would have if sitting in the same matter. Said Commissioner shall receive such compensation as may provided by law or by the order of said court, to be approved by e Governor."

Having thus prescribed the circumstances in which the Court may point a Commissioner it must be presumed that the legislature tended that in no other circumstances could a Commissioner be pointed. The expression of a condition upon which the au- ority rested excludes all other conditions.

Sec. 10973 of the G. S. 1915, reads: "Words giving a joint thority to three or more public officers or other persons, shall be nstrued as giving such authority to a majority of them, unless it otherwise expressed in the act giving the authority."

It has been many times determined by the Kansas Supreme Court at the general statutes relating to the interpretation to be given acts of the legislature apply in every case where the statute itself es not express a contrary intention. That is it is conclusively esumed that in the enactment of all laws the legislature has in ind the general statutes relating to the interpretation to be given the laws. It is not deemed necessary to more than refer to the e of cases thus holding. But if this is the rule then Sec. 5 con- red upon the Court of Industrial Relations power to adopt all sonable and proper rules to govern its proceedings must be read

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in connection with the general statutes just quoted. If this v is adopted it follows necessarily that the decision of the Supre Court interpreting like statutes, as in the leading case of Rail Company vs. Meyer, 58 Ks. 305, is conclusive against the inter tation of the act stated in this conclusion of law. The statute h ing created a court composed of three judges, those whose prope and property rights are to be affected have an undoubted righ the consideration of their interests by all three of the persons pointed by statute to determine such matters.

The respondent most respectfully excepts generally to the p of the report treating Chapter 29 of the laws of 1920, commo known as the Industrial Court Act, as valid and again cl

217 the rights, powers and immunities secured to it by the C stitution of the State of Kansas and by the Fourtee Amendment to the Constitution of the United States, and spe ically sets up as a defense that the Court of Industrial Relations h no valid or constitutional power or authority in the matter of management of the affairs of the respondent in manner and fo as attempted to be exercised in whole or in part by the orders March 21, and May 2, 1921, and objects and excepts to any reco tion of such orders as create any obligations or impose any du upon the respondent. D. R. Hite, Att y for respondent.

218 And thereafter on the 10th day of June, 1922, the Supreme Court duly filed its opinion and decision as follo

219 (Caption omitted.)

Original Proceeding in Mandamus (Reported 111 Kan., 501).

Writ Allowed.

SYLLABUS BY THE COURT.

Marshall, J.

1. The court of industrial relations has authority to make an or establishing wages to be paid employees and fixing the ho of labor to be observed in a packing house plant emplo approximately three hundred men, where a controversy arisen over wages and hours of labor and a meeting has b called to take a strike vote, and where instead of voti strike, the employees have voted to submit the contro to the court of industrial relations and have submitted t controversy to that court.
2. The court of industrial relations cannot make orders to be served by the operators of a packing house plant beyond matters embraced within the notice given, unless the op ators consent that matters outside the notice may be inve gated.

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. Under proper circumstances, the court of industrial relations can make an order, temporary in effect, slightly raising the wages of employees in a packing house plant and fixing the hours of labor, although the plant at the time the order is made is being operated at a loss. The Opinion of the court was delivered by

MARSHALL, *J.*: This is a continuation of Court of Industrial Relations v. Packing Co., 109 Kan. 629; — Pac., —. There this court said:

20 "This is an original proceeding in mandamus to compel the Wolff Packing Company, hereinafter named the defendnt, to put in effect a scale of wages to be paid by it to its employees nd to establish hours of labor as ordered by the court of industrial elations, hereinafter named the plaintiff."

The former opinion disposed of a number of legal questions. his is an opinion in the same action and disposes of the questions hat arise on the evidence.

1. The evidence, which was taken by A. L. Noble, of Wichita, ho was by this court appointed commissioner to take the evidence nd make findings of fact and conclusions of law, shows that the efendant was engaged in operating a packing plant in the City of opeka for the purpose of slaughtering animals for food; that the efendant employed about three hundred workmen in the operion of its plant; that a controversy arose between the defendant nd its employees concerning wages, hours of labor, and certain conitions under which the employees worked; that a meeting of the mployees was called for the purpose of voting on a proposition to rike on account of the controversy; that at the meeting thus called, he employees voted to present the controversy to, the plaintiff ather than to strike; and that thereafter a complaint was filed with he plaintiff. It is now insisted that the evidence does not show uch an emergency as gives the plaintiff jurisdiction to make any rder on the complaint that was filed.

On the former hearing, it was contended by the defendant that he pleadings did not allege that such an emergency existed as gave the plaintiff the extraordinary power of regulating the wages be paid by the defendant to its employees. This court in the syllabus to the former opinion said:

21 "The petition filed in this action alleged that such an emergency existed as justified the court of industrial relations in making an investigation."

What was said in the former opinion is approved. The defendt's plant is a small one, and it may be admitted that, if it should ase to operate, the effect on the supply of meat and food in this ate would not greatly inconvenience the people of Kansas; yet, e plant manufactures food products and supplies meat to a part the people of this state, and, if it should cease to operate, that urce of supply would be cut off. The plant comes within the op-

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eration of the law, and the court of industrial relations has pow
to make the orders provided by law under the circumstances nam
in the statute. The petition alleged facts which show that such
emergency as the law contemplates existed and gave to the plaint
authority to enquire concerning the matters alleged in the co
plaint. The evidence established facts sufficient to give to the co
of industrial relations authority to make proper orders thereund

Another matter that may be properly mentioned in connecti
with the discussion of this subject is that there is a presumpti
that the plaintiff made its order under proper circumstances. Th
presumption is not conclusive; it is rebuttable; yet, the presumpti
exists and whatever weight it has must of necessity be placed in s
port of the order made by the court of industrial relations,
though, in an action to compel compliance with an order of th
court, the court trying the action must determine the matter
itself.

2. The plaintiff has filed a large number of exceptions to t
report of the commissioner, both as to matters of fact and matt
of law. The commissioner reported, as one of his conclusions
law, that the orders contained in paragraphs 1, 5, 6, 7,
222 10, 12, 13, and 16 of the order of the plaintiff were ma
without jurisdiction and are unenforceable. This make
necessary to set out those orders. The plaintiff ordered that—

"1. In this industry the principles of the open shop, as now a
heretofore existing by agreement of the parties, are approved
the court and shall continue.

"2. Employees, whether organized or unorganized, shall rece
wages as shown in schedules hereinafter set out.

"3. A basic working day of eight hours shall be observed in t
industry; but a nine-hour day may be observed not to exceed
days in any one week without penalty: Provided, however, Th
if the working hours of the week shall exceed forty-eight in numb
all over forty-eight shall be paid for at the rate of time and o
half; furthermore, in case a day in excess of the eight-hour sh
be observed more than two days in any one week, all over ei
hours, except for said two days in said week, shall be paid for at
rate of time and one-half, even though the working hours of
week may be forty-eight hours or fewer.

"4. No guarantee of time per week is specifically ordered; i
sufficient work shall be offered to the regular employees in each
every month so that the monthly earnings of regular workers
be sufficient to constitute a fair wage under the Kansas indust
law, as heretofore defined by this court.

"5. The management of the industry shall, whenever possi
notify the workers in case the plant is not to operate the follow
day, by bulletins posted at the time clock prior to the closing ho
and if that be impossible, then by signal from the steam whis
the following morning, to make it unnecessary for workers to co
to the plant when there will be no work.

"6. Hours of beginning work shall be set by the manage

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and may be changed when necessary; but reasonable notice shall be given the employees of changes.

"7. The seniority rule as heretofore observed in the industry may continue.

"8. Reasonable rules and regulations in regard to conduct about the plant may be made from time to time as the same may be necessary, and reasonable notice of all such shall be given by posting at the time clock or personal notice to employees.

"9. Women workers shall receive the same wages as men engaged in the same class and kind of work.

"10. Toilets and dressing rooms used by the women workers shall be in charge of a woman.

223 "11. Piece-work rates shall be paid in accordance with piece work schedule herein set out.

"12. Minor details in regard to work and wages cannot be set out in an order of this court; but whenever differences arise at any time they should be taken up by the grievance committee of the employees and the management, and reasonable time shall be allowed for consideration and adjustment of the differences.

"13. The total working time for women employees, inclusive of overtime, shall not exceed fifty-four hours in any one week and not more than nine hours in any one day.

"14. Workers paid by the week or day, if employed within the plant and not within the office or sales department, shall be subject to hours of work and overtime as other employees under the terms of finding No. 3 hereof.

"15. The temporary order heretofore made in this case shall stand and be complied with by the respondent company, beginning on the date of said temporary order and continuing until May 1, 1921, the date of this order.

"16. The respondent company shall, within a reasonable time, furnish a suitable room for its employees in which to eat their midday lunch, well ventilated and apart from those portions of the packing house in which the work of slaughtering animals and dressing and preparing the packing products are carried on, and apart from toilets and dressing rooms.

"17. The following schedule of minimum wages shall be paid by the respondent company to its respective employees to-wit: (The details of the schedule are immaterial.)

"18. The establishing of the above minimum wage schedule shall not in any way be construed as restricting or preventing the respondent from paying a higher wage when the same is deemed advisable.

"19. In departments operating twenty-four hours a day and seven days a week, each employee therein shall be entitled to one day off each week.

In other departments work performed on Sunday and legal holidays shall be paid for at the rate of time and one-half.

"This order shall take effect and be in force on the 1st day of May, 1921, and shall continue until changed by the court, or changed by agreement of the parties with the approval of the court."

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The conclusion of law reached by the commissioner was bas
on the fact that the complaint filed with the plaintiff did not all
anything to give the court jurisdiction to make orders concern
the subjects mentioned in paragraphs 1, 5, 6, 7, 8, 10, 1
224 13 and 16 of the order. An examination of the compla
reveals that nothing was said concerning any of these matte
The plaintiff urges that those matters were embraced within t
complaint because they were embraced within the contract betwe
the defendant and its employees and that a copy of the contract w
attached to the complaint. The plaintiff also contends that the d
fendant waived its right to object to those parts of the order being p
into effect because the defendant insisted on the contract being int
duced in evidence and because the defendant through its attorn
stated to the court of industrial relations that he was "authorized
make a proposal to the court, that it is not prepared to accept t
terms of the order of March 21, 1921, making the eight-hour day
the basic day, with time and one-quarter for the ninth hour and t
and one-half thereafter, but as a counter proposal the Charles W
Packing Company proposes to adopt the forty-eight-hour wee
meaning thereby that employees shall be paid the regular sched
for forty-eight hours' work, and all time employed over forty-eig
hours' work shall be paid for at the rate of time and one-half; t
employees if working less than forty-eight hours shall be paid at t
regular schedule for the time actually engaged, but the compa
does not consent to the fixing of any guaranty of hours per wee
On the hearing before the court, the defendant unqualifiedly agr
to make the wages of women the same as those of the men for t
same kind of work. That agreement was put into effect, and the
is now no controversy about that portion of the order. Other th
the agreement concerning the wages of women, it does not appe
that the defendant submitted for the consideration of the plaint
anything except what was contained in the complaint. An exa
nation of the complaint reveals that the only questions named in
were wages and hours of labor.

Section ten of Chapter 29 of the laws of 1920, Special S
225 sion, the Court of Industrial Relations act, reads:

"Before any hearing, trial or investigation shall be held by s
court, such notice as the court shall deem necessary shall be given
all parties interested by registered U. S. mail addressed to said part
to the post office of the usual place of residence or business of s
interested parties when same is known, or by the publication of
tice in some newspaper of general circulation in the county in wh
said industry or employment, or the principal office of such utili
or common carrier is located, and said notice shall fix the time a
place of said investigation or hearing. The costs of publication sh
be paid by said court out of any funds available therefor. Sa
notice shall contain the substance of the matter to be investigate
and shall notify all persons interested in said matter to be pres
at the itme and place named to give such testimony or to take su
action as they may deem proper."

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The notice served on the defendant was a copy of the complaint with a copy of the contract between the defendant and its employees. Such a notice as is required by the statute was not given to the defendant concerning the subjects named in paragraphs 1, 5, 6, 7, 8, 10, 12, 13 and 16 of the order of the court of industrial relations, and the defendant did not voluntarily submit to an inquiry into those matters. It follows that the court had no jurisdiction to make any order concerning any of them. However, it should be stated that if in the course of its investigation, matters that ought to be considered should come to the knowledge of the court, it may investigate them and make orders concerning them after taking the necessary steps to acquire jurisdiction.

3. The commissioner found and the evidence shows that for some time prior to the making of the order by the plaintiff, the defendant had been operating its plant at a loss, but the evidence does not show what was the cause of the loss. The order made by the court of industrial relations slightly raised the wages of the employees over the wages that were in effect at the time the order was made.

The stock of the defendant's plant is largely held by the allied packers, a Delaware corporation with headquarters at Chicago, Illinois, operating six other meat packing plants situated in eastern cities and in Canada. A portion of the proceeds arising from
126 the defendant's plant is paid over to the Allied Packers. How much does not appear.

Section 8 of chapter 29 of the Laws of 1920, the court of industrial relations act, provides that—

"If either party to such controversy shall in good faith comply with any order of said Court of Industrial Relations for a period of sixty days or more, and shall find said order unjust, unreasonable or impracticable, said party may apply to said Court of Industrial Relations for a modification thereof and said Court of Industrial Relations shall hear and determine said application and make findings and orders in like manner and with like effect as originally. In such case the evidence taken and submitted in the original hearing may be considered."

The court of industrial relations, in its opinion on which the order was based, said:

"Any order made by this court, after having been put into force and effect for a period of sixty days, may be reviewed at the instance of either party and additional evidence introduced to show its practicability, its impracticability, its reasonableness or its unreasonableness. The order made in this case at this time will be made in view of that provision of the law. The business conditions of the day are unusual and unstable, and sixty days or ninety days may bring about such changes as would require a revision of any order made herein."

Laws and orders fixing rates for a period of time for public utilities have been sustained to determine their effect upon the revenue of such utility. (Wilcox v. Consolidated Gas Co., 212 U. S. 22, 55;

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Northern Pacific Ry. v. North Dakota, 216 U. S. 579; Lincoln G
Co. v. Lincoln, 250 U. S. 256, 269.)

The defendant's plant is being operated at a loss, and the order
the court of industrial relations increases the wages of its employe
Is the order invalid for that reason? The general schedule of ra
charged by a public service corporation cannot be decreased by la
fully constituted regulating bodies when the business of that corpo
tion otherwise prudently and efficiently conducted, is being operat
at a loss. This so far as state regulation is concerned, is based
the fourteenth amendment to the constitution of the United Stat
prohibiting any state from depriving any person or property wit
out due process of law and from denying to any person within
jurisdiction the equal protection of the law. Compelling a publ
service corporation to render service at a loss is a violation
227 the prohibitions contained in the fourteenth amendment; b
rates and wages are not the same. Rates are compensati
paid by those who desire the services of public service corporations f
the services rendered by such corporations. Wages, for the purpo
now under discussion, are that part of the cost of the finished produ
given to those who perform service in its production. Another w
of distinguishing the two, is that rates are the prices paid to pub
service corporations for their finished product; wages are that p
of the cost of the finished product given to those who perform se
ice in its production.

The operators of a packing plant cannot by law be compelled
sell the finished product of their plants at a price that will not all
them a fair return upon the investment, but that does not say th
those operating the packing plant cannot be compelled by law to p
a living wage to their employees, notwithstanding the fact that t
plant is being operated at a loss. An industry of any kind that c
not be operated except at the sacrifice of its employees ought to
business. An industry ought not be permitted to recoup its lo
out of the wages of its employees where those employees are in s
a condition that they cannot prevent it. It may be argued tha
laboring man is not compelled to work for any particular emplo
and that the laboring man can quit at any time and go elsewh
So far as the law is concerned, this is true—he has an absolute r
to go and seek work in some other place; but actually, and in fac
is often impossible for a working man to quit the work in which
is engaged and readily find other work. Economic conditions
such that, most of the time, when a working man finds himself
of work, he must remain out of work for days, weeks, and mon
during which time he and his family suffer. Many a working m
cannot quit when he desires so to do. He must continue to w
although his wages are not sufficient to properly feed
228 clothe himself and his family and educate his children. P
lic welfare demands that all industries that provide f
clothing, fuel, and transportation shall continue to operate bec
without their operation suffering must result; but public welfare
wise demands that the working man engaged in the production of
things that minister to the comfort of all, must be paid such com

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ation for his services as will enable him to live in the manner described in the court of industrial relations act.

The defendant is operating its plant at a loss. Why, does not appear from the evidence. At least, this court is unable to determine why, and for the purpose of this discussion, it is unnecessary to ascertain why. The plant may be badly located on account of transportation facilities. There may have been managerial mismanagement. A part of the money arising out of the operation of this plant may have been taken by the Allied Packers and used in the operation of the other plants conducted by them. It may have been that the loss was due to unstable conditions in livestock and meat markets prevailing during the time covered by the investigation of the court of industrial relations. The defendant contends that to prevent operating its plant at a loss, it must have its employees work for less than what the court of industrial relations has determined are living wages. In other words, the defendant is trying to prevent loss in its business by putting the loss on its employees. That should not be done if its employees are thereby compelled to work for less than living wages. If the plant cannot operate without so doing, it is only a question of a short time until it must stop. If the plant is badly located on account of transportation to its market or from the source of supply of its raw material, it ought to be moved to where these handicaps will not exist. If the loss is caused by managerial faults, they ought to be corrected. Recoupment of losses by either of these matters ought not be brought about by compelling the working man to labor for less than living wage.

The defendant should be compelled to pay the wages fixed in the order made by the court of industrial relations and should be compelled to establish the hours of labor there fixed, and should look elsewhere to recoup its losses and find the means of operating its plant at a profit.

A peremptory writ of mandamus will issue to compel the defendant to put into effect those parts of the order of the court of industrial relations numbered 2, 3, 4, 9, 11, 14, 15, 17, 18, and 19.

DISSENTING OPINION.

BURCH, J. (dissenting): I find myself halted at the very threshold of this litigation. So far — it is involved in this case, the act creating the court of industrial relations belongs in the class of statutes beginning to be known in the fields of constitutional law as emergency statutes. The court of industrial relations is to do for this state, by means of orders respecting the conduct of essential industries, what Congress did for the United States when it passed the Adamson law, and what the legislature of New York did for the people of that state when it passed the emergency housing laws. The statute was interpreted in this manner in the case of the State, ex rel., v. Howat, 109 Kan. 376, — Pac. —, and in the original opinion in this case (Court of Industrial Relations v. Packing Co., 109 Kan. 629, — Pac. —). The legislature did not

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completely socialize the manufacture of food products, the manu
facture of clothing and the production of fuel, and the mere fa
that the defendant conducts one of the essential industries, is n
enough to subject its business to state control. The legislature ha
in mind the coal strike of 1919-1920, and merely authorized inte
vention by the court of industrial relations to insure such efficien
and continuity in production of the necessaries of life as will sa
the people from annoyance and distress.

In the Howat case it was said:

"Continuous production, and production according to the a
proval of an efficiency expert, are not required at all. Only th
continuity and efficiency are required which will secure th
231 people from privation and oppression. * * * A contr
versy between employer and workers, or between groups o
crafts, of workers, which endanger production, creates an eme
gency, with which the court may deal. * * *

"Section 9 does not authorize a general revision of labor co
tracts." (pp. 414, 415.)

To be cognizable by the court of industrial relations, the n
sance of strife, disorder and waste and the menace to public pe
public health, and public welfare generally, consequent on indu
trial controversy, must be related to the ultimate object of th
statute.

Applying the foregoing interpretation of the statute to the pr
ent case, until a controversy brings within reasonable contem
tion a discomforting shortage in the supply of food which the d
fendant produces, public interest does not attach to the condu
of its business and the powers conferred by the statute are not ca
into action.

It seems quite clear the court of industrial relations did not a
on this interpretation of the statute. It evidently believed that
simple complaint it could regulate conduct of the defendant's bu
ness, and it even went far beyond the complaint presented to
in its regulations.

The complaint to the court of industrial relations alleged broa
that the controversy between the defendant and its employees w
one which endangered continuous operation and efficiency of th
service rendered by the defendant's plant, and that the controve
affected, and would affect, the manufacture and production of ce
modities necessary for human food within the state of Kans
The petition to this court pleaded this complaint, and the co
properly enough held that the petition sufficiently alleged an eme
gency had arisen which justified the industrial court in taki
cognizance of the complaint. (Court of Industrial Relations
Packing Co., 109 Kan. 629, 635, — Pac. —.) The court now sa
in effect, that the evidence taken by commissioner Noble est
lished the fact that an emergency had arisen such as t
232 statute contemplates. Presumably the court refers to the e
dence bearing upon the meager facts stated in the opini
If the court refers to other evidence establishing a statutory eme
gency, I have not been able to discover it by searching the reco

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Mr. Charles Wolff, president and general manager of the defendant, testified as follows:

"Q. Where are your products sold, Mr. Wolff? A. Throughout the United States; also do some export business.

"Q. What proportion of your sales of your products is made in the state of Kansas, as compared with the whole amount of the business? A. Well, I don't know exactly what the percentage would be, but of course it would be a small per cent. * * *

"Q. Is there any competition in the business in which this company is engaged? A. Yes, we have plenty of competition."

It is a matter of common knowledge that the packing industry of Kansas is one of immense magnitude. It is not necessary to present the statistics. No one would attempt to deny that the quantity production of packing-house products in Kansas is enormous. Only a small percentage of the product of the defendant's small plant is sold in Kansas and, if the plant were to close permanently, the defendant's trade would be absorbed by competitors so quickly, the people of the state who consume Wolff products would not be inconvenienced for a single meal, and the people of the state generally would not be affected at all.

Approximately 300 of the defendant's employees are members of a local union of the Amalgamated Meat Cutters and Butchers' Workmen of North America. The stock of the defendant is owned by the Allied Packers, a corporation owning packing plants in Boston, Mass., Wheeling, W. Va., Macon, Ga., Richmond, Va., Buffalo, N. Y., and one plant in Canada. In the testimony are some allusions to a threatened strike of members of the meat cutters and butchers' organization, on account of controversies 233 with packing companies other than the Allied Packers, over violations of an agreement to which the Allied Packers was not a party. Possibility that this strike might occur no longer existed when the order of the court of industrial relations was promulgated, and the opinion of the court of industrial relations accompanying its order makes no reference whatever to any emergency respecting the food supply of the people of this state, except in summarizing the complaint which initiated the investigation. The order was not based on any menace to the food supply of the state, and could not be, because it was not possible that suspension of operation of the defendant's plant could appreciably affect that supply.

Industries concerned with furnishing food, clothing, and fuel, are segregated by the statute for regulation. A controversy cognizable by the court of industrial relations, for the purposes not merely of investigation but of regulation, must — definitely related to the object of supplying the state with the necessities of life, and must create an emergency respecting that supply, or basis for the classification of industries fails, and the classification becomes arbitrary. In this instance, not only was the fundamental element of emergency lacking, but elements which, under other circumstances, might contribute to an emergency, were not present.

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Employees of the defendant testified that what they wanted was an eight-hour day, regardless of pay for extra hours. While the defendant has yards for accommodating live stock, and has facilities for refrigerating its products, it is a small, local plant, dependent on an irregular local live-stock market, which it must maintain, or lose altogether, and the following finding by Commissioner Nolan is fully sustained by the evidence:

234 "By reason of the limited capacity of the plant, especially the refrigeration and storage, and the limited market for live stock at Topeka, it is impracticable to operate this plant with shifts of workmen, or to use more than one set or shift of workmen in its general operation. The plant is the only quantity purchaser at Topeka of live stock for killing, and except to a limited extent the packing company does not have control or advance notice of the quantity of live stock which will be delivered, or when. It is also practically necessary that the plant purchase all of the live stock offered and delivered in order to hold the market, the purchases being made on the basis as to price of the competitive market at Kansas City. It is also practically necessary that all live stock purchased be killed within a limited time after it is received at the yards and when killed it is necessary that the operations continue without cessation until the meat is placed in refrigeration. Therefore, on some days the operation of the greater part of the plant will necessarily occupy only a few hours, and on other days more than eight or even nine hours, depending largely upon the amount of live stock on hand for killing, and the condition is one that cannot practically be controlled by the respondent. The most arduous labor is that of the killing gang, working on what is spoken of in the evidence as the "chain," is not continued more than eight hours a day, but the extra time is generally consumed in the cleaning-up work after the killing is over. The operation of the plant would not afford sufficient working hours per week to hold the men if those of the killing gang were not afforded other work in the plant besides the actual killing. Since the abolishment of extra pay for time over eight hours, the number of hours of work per day at the plant has not changed materially from those which obtained during the period covered by the expired contract."

It is regrettable that men and women should be tempted, in order to earn a living, to accept employments calling upon them to overtax their strength. In this instance, however, we are confronted with this dilemma: Continuity and efficiency of operation of the defendant's plant must be maintained, in order that the people of the state may be supplied with food; the defendant's plant is so located, is of such size, and must operate under such conditions, that its employees must sometimes work more than eight hours per day; because overwork ultimately impairs ability to produce, this fact creates an emergency under the statute with which the court of industrial relations should deal; to correct the evil which constitutes the emer-

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gency, working more than eight hours a day must be pro-
35 hibited; to prohibit working more than eight hours a day will close the defendant's plant; and so a regulation nominally in the interest of continuity and efficiency of production, puts an end to the defendant's contribution to production.

The court of industrial relations recognized the fact that the defendant's employees must work extra hours when necessary. In the opinion accompanying the order it was said:

"The respondent's evidence shows that it is unable to control the supply of live stock. Farmers and stock raisers will ship in the live stock when it is ready to ship; and so, in spite of all the management can do to keep up a steady supply, there will be times when the yards fill up and it becomes necessary, in order to avoid great loss to the company, to run more than eight hours a day."

The court of industrial relations theorized on the subject of paying time and a half for overtime, as follows:

"Overtime should not be considered in the light of extra pay; the wage should be fair on the eight-hour basic day. Overtime should be considered as a penalty upon the company to prevent the long hours and exhaustion of the workers."

Commissioner Noble, sticking to the facts, concluded his finding, quoted above as follows:

"Therefore, the commissioner finds that the hours of employment of the workers generally in the plant are governed by conditions over which the respondent has not practical control, and that the only effect of the establishment of a basic eight-hour day in the court's order would be upon the rate of wages required to be paid; that, however it might be regarded in other cases, the basic day in this order is a wage provision rather than a working condition."

This takes working more than eight hours a day out of the case as something creating an emergency, and leads to consideration of the subject of wages in the defendant's plant, as creating an emergency in the food supply of the people of this state.

Commissioner Noble returned the following finding:

36 "The net change of wages put into effect by the packing company on January 17, 1921 (which brought on the controversy), was slight beyond the abolishment of the 5-cent-per-hour bonus and the extra pay for overtime. Some wages were raised, more were unchanged, and the remainder were lowered from 2½ per cent to 14 per cent, making an average reduction in the hourly wage throughout the plant of less than a half cent per hour, * * *"

The court of industrial relations contends the reduction was greater. In any event, the reduction was small, and the presiding judge of the court of industrial relations testified before Commis-

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sioner Noble concerning the wage scale contained in the co order as follows:

"In the final wage scale that we made we believed that we had in any very serious, to any very serious extent, increased the w as fixed by the company in its posted notice. * * * We reali that we possibly had increased some, but we felt not sufficiently cripple the company financially in any serious way."

The actual increase is not material. Whatever it may have b the court of industrial relations did not regard the wage scale of defendant's plant as so low that, by degrading labor, it limited duction of one of the necessaries of life to such an extent as to c an emergency, and it could not have been so regarded.

Strikes are infectious things. They may spread from plan plant, and from industry to industry, and may invite exercise o the power the court of industrial relations possesses. But there no strike. Many of the defendant's employees are old residents responsible citizens of the city of Topeka, and the testimony sh they were not under domination of agitators. The leaders w earnest, sensible, law-abiding men and women, who believed t were unjustly treated. There was evidence that the supply of l available to the defendant was abundant, and a previous strike only one in the history of the plant, was little more than fifty cent effective, and lasted but a short time. Sections 17 and 1

the court of industrial relations act, prohibiting and pun
237 ing picketing, intimidation, and other trouble-making
dents of a strike, were available for preservation of the p
lice peace, had a strike occurred.

Taking into account the relations of the defendant's produc the food supply of the state, and the entire situation existing a defendant's plant when the controversy arose, I am unable to cover anything approaching an emergency such as the statute templates, and regard the order of the court of industrial relation improvidently made. Since I do not reach consideration of the questions raised by assuming an emergency, it would appear offic for me to discuss them.

Porter, J., concurs in this dissent.

238 And thereafter within twenty days, pursuant to the rul of the Supreme Court of the State of Kansas, the defend filed its petition for rehearing as follows:

239 [Caption omitted.]

PETITION FOR REHEARING.

The purpose of the defendant is (1) to direct attention to cer statements of facts in the opinion of June 10, 1922, and to req the correction of these statements to conform to the record; (2 review the previous decisions interpreting the act creating the c

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industrial relations and defining powers conferred upon that tribunal; and, to request a modification and reconciliation of these decisions; and, (3) to present reasons which, it is hoped, will persuade the court to re-examine its arguments and conclusions and deny the application of the plaintiff for a writ of mandamus.

Statements of Facts Found in the Opinion of June 10, 1922, Which Should Be Corrected to Conform to the Record.

First. Beginning the third paragraph of the opinion it is said:

"The commissioner found and the evidence shows that for some time prior to the making of the order by the plaintiff, the defendant had been operating its plant at a loss, but the evidence does not show what was the cause of the loss."

In another place this statement is repeated and amplified, as follows:

"The defendant is operating its plant at a loss. Why, does not appear from the evidence. At least, this Court is unable to determine why, and for the purpose of this discussion, it is unnecessary to ascertain why. The plant may be badly located on account of transportation facilities. There may have been managerial mismanagement. A part of the money arising out of the operation of this plant may have been taken by the Allied Packers and used in the operation of the other plants conducted by them. It may have been that the loss was due to unstable conditions in livestock and meat markets prevailing during the time covered by the investigation of the court of industrial relations."

It is true that in his thirteenth finding the fact the commissioner says: "there is no evidence from which a definite deduction can be made of why the business of the respondent has been thus unprofitable for three years"; but, he adds:

"Neither the losses in operation nor the reductions in operation during the six months ending on April 30, 1921, were caused by any inability of the respondent to secure sufficient workmen at the wages paid."

Moreover, the closing paragraph of this finding reads as follows:

"The losses of the packing company in the operation of its plant have been heavier during the existence of the working contract of May 10, 1920, that at any other period, and the difference between the loss in operation and what would have been a reasonable gain or profit may be accounted for in the combination of the depreciation in market value of stock on hand and the bonus and extra pay for overtime covered by that contract."

It therefore appears that one of the primary causes of the loss is the excessive wages paid to the plant employes from May 10, 1920 to January 17, 1921. Furthermore an examination of the financial statements, furnished to the commissioner and found as exhibits in the transcript, shows that the sales for the year ending October 31, 1920, were $7,440,725.00, an average of about $620,000.00 per month. For the six months ending April 30, 1921, the sales were $2,282,736.00 an average of about $380,000.00 per month. From

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finding No. 7 it may be ascertained that the capacity of the plan 5,000 hogs per week, and that only about 2,800 hogs per week w killed and cured during the six months' period ending April 1921. Perhaps these findings do not produce the effect upon court they do upon the owners of property of this character. T are sufficient to prove to any group of business men that the rea for the losses over and above the increased pay roll due to the bo and large wages paid under the agreement of May 10, 1920, the enormous reduction in the market price of products, shown the findings of the commissioner to be not less than 20 per c and the great shrinkage in the volume of sales. It is a busi axiom that profits in a manufacturing plant cannot be expected less the plant is operated continuously to its capacity. If packi house owners cannot sell their products they must cut down p operations, as otherwise their storage capacity is soon exhaus and cutting down operations means continued, inevitable l

241 These financial statements account for every penny of revenue received during the several periods. The income expense statements go into minute detail of expenditures. All of t items were allowed by the commissioner as legitimate charges aga income except charges reflecting bond interest, central office and ministration expense. The result of the Commissioner's inves tion is, and he finds, that for more than three years, the total nue of this company from all sources has been insufficient to the cost of live stock and the expenses of placing its products on market. The plaintiff did not except to the com-issioner's a ance of these expense items, nor in any way suggest that they not proper expenditures. The industrial court's accountant given free access to the books. Counsel for the industrial court examined the accountants at great length. Commissioner N asked them many questions; yet, none of the witnesses' examines the commissioner, suggested or intimated that "a part of the m arising out of the operation of this plant may have been take the Allied Packers and used in the operation of other plants o ducted by them." In plaintiff's abstract and brief no such ch is made or insinuated. It would be baseless if made and co be sustained, even by inference, upon this record. It occurs counsel that the court's remark, quoted above, is occasioned by a gumentative statement made by him solely to test a ruling w the industrial court appeared to be about to make. It was state the time that it was so made and was so understood by the ju of the industrial court and by the commissioner.

Referring to this incident the Commissioner says Findings of No. 14):

"That evidence (Referring to Mr. Wolff's statement of L was somewhat qualified by an admission of counsel for the resp ent made in the same connection that the Wolff plant may been charged by the central office of the Allied Packers with a portion of losses suffered by other packing plants in the ance.

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2 This admission was not justified in the facts unless such losses are reflected in the central office administration charges retofore mentioned in these findings, and which are eliminated operating expenses of the Wolff Plant."

It should require no evidence for this Court to notice as a publ y known condition, the ruinous business depression which fol- ved the close of the late war. The enormous losses manufacturers d business men generally were compelled to absorb after the close the war, is mere common knowledge. In view of these circum- nces, facts and considerations, it is submitted that if this Court mments on this point at all it should at least refrain from intimat- g that losses reported by the commissioner arose from unknown ses or improper or conduct of the affairs of the company by its nagement or its principal stockholder. As to the location of the perty which the court intimates would be improved by moving ewhere it should be sufficient to say that this plant sprung from mall butcher shop. It was incorporated in 1886 and until the r of 1918 made sufficient profits to pay regular dividends. It is t conceivable, with such a history, that the plant is badly located her as to market for its raw material or its finished products. It most respectfully but earnestly requested that the above quoted guage employed by the court be corrected so that no misleading tement of the actual facts shall embarrass the further progress of s litigation.

Second. On page 9 of the opinion appears the following:

"The stock of the defendant's plant is largely held by the Allied ckers, a Delaware corporation, with headquarters at Chicago, Illi- s, operating six other meat packing plants situated in eastern es and in Canada. A portion of the proceeds arising from the fendants plant is paid over to the Allied Packers. How much s not appear."

This is so manifestly contrary to the commissioner's findings and evidence that fairness compels a correction. In finding of fact . 8 the commissioner reports, in substance, that, periodically, the fendant is charged by the Allied Packers with current interest d on obligations incurred by the Allied Packers in behalf of the defendant; also, with a certain arbitrary portion of overhead and administration expense; and also, a certain arbitrary portion of the interest on the bonded debt of the Allied kers. He says second paragraph of the 8th finding of fact):

"It is suggested in the evidence that this co-ordination of control d operation is a distinct financial advantage to the Wolff Com- y in furnishing a market for its surplus products and finding essary credit for its operations, but there is no evidence on which stablish the value, if any, to the Wolff Company of such service, for the purpose of this case the administrative and central office enses must be regarded as an expense of the Allied Packers in lizing to itself as a stockholder the benefits of the operations of Wolff Company, rather than an operating expense of the Wolff mpany and neither that nor the bond interest charged against local company should be taken into consideration in determining

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the profits and losses of the Wolff Company, and whether a fair
turn to the owners on the capital invested would be prevented
enforcement of the order in question.

In Finding No. 10, the commissioner reports:

"While charges made on the books for central office expense
bond interest are items which might be classed in the nature of di
dends to the Allied Packers, yet none of these have been paid
earned and they merely increase the debit balance of the W
Company on the current account from time to time."

It thus appears, beyond possibility of question, that no portion
the proceeds arising from the operation of the defendant's plant
been paid to the Allied Packers. The mere fact that certain amou
claimed to be due from the defendant to the Allied Packers h
been charged upon the books of the Allied Packers to the W
Packing Company, and upon the books of the Wolff Packing C
pany credited to the Allied Packers, is very far from sustaining
conclusion above quoted from the opinion that any part of the p
ceeds arising from the operation of the defendant's plant "h
been paid over to the Allied Packers." This erroneous statem
assumes further importance in view of the fact that in arriving
his findings of the defendant's losses from operation the com
sioner deducted from the defendant's charges against gross inc
all of the items which this Court says were paid to Allied Pack
His finding is that these items merely increase the debit balanc
the Wolff Company in the current account from time to time. Th
fore, the defendant earnestly solicits the court to correct this s
ment and follows the records which, indisputably shows
244 none of the proceeds arising from the operations of th
fendant's plant have been paid over to the Allied Pack

Third. Both in the third paragraph of the syllabus and on p
9 of the opinion, this Court says that the order made by the ind
trial court slightly raises the wages. It does not give the figu
either in a statement of the case or otherwise. Of course "slight
is a relative term. As compared with the income of many l
packing companies which might be mentioned, an increase of $
000.00 a year in operating expense reasonably might be said t
a slight increase; but in the case of the defendant the increas
$25,000.00 (or to quote from finding of Fact No. 7 in the com
sioner's report $24,341.76) amounts to 2½% on the value o
plant, or 4⅛ per cent on the outstanding capital stock. The
of the word "slightly", therefore, as reflecting the loss to the ow
of this property is hardly justified.

In this immediate connection it is very much to be regretted t
the majority of the court did not deem it proper clearly to stat
facts upon which the court's conclusions are based. Counsel
left to conjecture whether the court approves the findings of f
made by Commissioner Noble. If in the opinion of the court, C
missioner Noble's report of the facts is correct, it would add to

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alue of the opinion to epitomize the facts ascertained by its com-
oner, upon which the decision rests.

Fourth. In the opinion occurs the following:

"The defendant contends that to prevent operating its plant at a
ss, it must have its employes work for less than what the court
f industrial relations has determined are living wages. In other
ords, the defendant is trying to prevent loss in its business by put-
ng the loss on its employees. That should not be done if its em-
loyees are thereby compelled to work for less than living wages.
f the plant cannot operate without so doing, it is only a question of
a short time until it must stop.

45 If the plant is badly located on account of transportation to its market or from the source of supply of its raw material ought to be moved to where these handicaps will not exist. If e loss is caused by managerial faults, they ought to be corrected. ecoupment of losses by either of these matters ought not to be rought about by compelling the working man to labor for less than living wage."

The language in italics is contradicted by the commissioner's find-
gs; and the intimations of improvident management, bad location
d that defendant has attempted to recoup its losses by compelling
nployes to work at less than living wages are wholly unsupported
any fact, circumstance or finding in the record. In finding No.
the commissioner shows the loss for the year ending October 31,
920, adjusted by cutting out all bond interest, all administrative
d central office expenses and reducing the depreciation reserve
66⅔%, amounted to $99,848.23, and for six months ending
pril 30, 1921, $86,462.50, a total of $186,310.73 for the period of
ghteen months immediately preceding the order of May 2, 1921.
nding No. 7 shows the difference between the aggregate amount
wages the company was paying and the amount which the indus-
al court ordered to be paid is approximately $24,000.00 per annum
$2,000 per month. The pay roll of employes affected by the
dustrial court's order for the period from November 1, 1920, to
pril 30, 1921, amounted to $177,966.73 which was 44% of the
al expense. The pay roll from November 1, 1920, to January 15,
21, was $80,036.49, which was 53% of the total expense and the
y roll for the period from January 17, 1921, to April 30, 1921,
s $97,930.24 or 38% of the total expense. The losses as shown
the company's books for the period from November 1, 1920, to
nuary 17, 1921, were $91,481.06, so that the losses for that period
ceeded the entire pay roll for the same period. The losses for
e period from January 17, 1921, to April 30, 1921, were $63,-
878.42, which was $33,900 less than the pay roll.

46 The commissioner reports that if the minimum wage order made by the industrial court had been in force for the period om January 17, 1921 to April 30, 1921 there would have been an crease of the pay roll of $7,099.68. (Finding of Fact No. 7.) his would have made the total pay roll expense for that period 05,030.02 instead of $97,930.24 and the losses would have been

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$70,978.10 instead of $63,878.42; or if we use the figures reflecti
the losses as found by the commissioner in finding No. 9 the lo
would have been $31,216.62 in place of $24,116.94. It appe
therefore that out of the total losses as shown by the compan
books for the period of three and one-half months following the
duction made by the company the stockholders have absorbed $
778.74 and the employees $7,099.68. If there had been a prop
tional sharing of the loss the employes should have contibuted 5
and the owners the remaining 62% but the employees contribu
only 12.7% and owners 87.3%. But, as a matter of fact, the e
ployees of this packing company contributed nothing towards
losses sustained by the owners of this property. The testimony
Mr. Wolff, (Vol. 1, p. 150 Transcript evidence before Commissio
Noble) shows that during the period from January 7, 1921, to
time of the hearing before the commissioner in the summer of 19
this defendant was paying 50% of its employees higher hourly wa
than was being paid by other employers during the same time
the same class of work in the City of Topeka. It follows, therefo
that if this plant had shut down because of the enormous los
sustained 50% of its employes, if they secured employment at
would have received less compensation than they actually recei
from the owners of this plant during the period covered by the
vestigation.

247 The hypothesis that the employees contributed 12.7%
the loss is based upon the supposition that $7,099.68 is
amount which the employees affected by the industrial court's or
would have received in excess of the amount actually received
the period from January 17, 1921, to April 30, 1921.

Perhaps it may be said that because this court has assumed t
the losses sustained by the packing company were as found by
commissioner, and, notwithstanding such assumption, holds
order valid as to wage increase, these details are unimportant even
this be the theory it is of importance that a statement made by
Court that this packing company has endeavored to "put its lo
on its employees" should not remain unchallenged. As stated at
outset, such a statement is contradicted by the commissioner's fi
ings and is not supported by a fact or circumstance in the record
This Courts traditional fairness; the industry, ability and integ
of its members and the high considerations and respect in wh
they are justly held by the people of this State—all convince t
the record will be re-examined and if these statements and initi
tions of facts are found to be erroneous and unsupported they
be corrected.

Review of This Court's Decisions.

As the majority opinion and decision of June 10, 1922 fin
dispose of this case in this Court, the defendant, takes leave bri
to review the previous decisions involving the industrial court,
the issues in this case, with the purpose of inducing a re-examina

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the grave questions which have attracted widespread curiosity and interest.

The act of January 23, 1920 creating the Court of Industrial Relations has been for two years a prolific subject of public discussion. It has been attacked, criticised, approved and condemned by the press, by employers, by employees, labor leaders, economists, lawyers and politicians. Its friends with one eloquent exception are mostly silent, its enemies active and argumentative. Perhaps the most remarkable feature of the discussion is the antagonism of organized labor, represented by such orators as Mr. Gompers. This antagonism must be a great disappointment to the altruistic optomists who promoted the enactment in the confident expectation that the intelligent laboring man would be quick to see and accept the paternal supervision of a real and disinterested tribunal where he could secure the orderly, just and compulsory settlement of disputes over the amount of his compensation. It was supposed no doubt, his intelligence would discover that by submitting his claims for increased wages to this paternal legislative court he could lose nothing and might gain much. If his claim was denied he could seek another job. If it was granted the employer must pay. But labor leaders claim this law deprives the workingman of his inalienable and divine right to strike, his most effective coercive weapon; that the mere recognition of the right to quit an employment deemed essential to public comfort and welfare is inadequate, because, presumably quitting work and striking do not mean the same thing to labor leaders. Organized labor asserts this statute and court delivers labor into the hands of capital with no avenue of escape except through orders of a tribunal without the power to do what labor leaders believe and say the unions can accomplish, the destruction of the business and property of every employer who refused their demands, for more pay.

To judge by their public expressions, employers are definitely opposed to the industrial court. Their attitude is a jealous apprehension of ignorant prejudiced and officious interference with the management of their property and business through tedious and expensive hearings and orders which may paralyze their efforts and destroy their property without compensating benefit to anyone. They justly say that if the claims of their employers for higher pay are allowed, the industrial court can make them pay; but if disallowed the workers cannot be forced to work for the wages prescribed by that court. That, complaint by a few dissatisfied employees over a simple dispute about wages, brings upon them a flock of examiners, accountants, engineers, judges, reporters, experts and lawyers, without the slightest evidence of their unwillingness or inability to run their own affairs. In a word, that they hold their property and business subject to incessant questionnaires, temporary orders, changes in hours, minimum wages, collective bargaining, etc., etc.

The fraction of the public left after accounting for the employers and workers in the essential industries (said to be the ultimate beneficiary of the act), by the press is said to hope for the best, but

object to paying $200,000.00 annually to maintain a tribunal
it is openly charged has increased rather than allayed dispu
tween employer and employee because of the antagonism of
and because of the manifest impossibility of securing the serv
competent business men to decide essentially business mens
troversies. It fairly reflects the attitude of the fractional
(neither the employers nor employees included) to say that
industrial court could be limited to inexpensive activity
emergencies such as seduced a confiding legislature into enacti
law, it would be tolerated as a harmless effort in the right dir
The comments of lawyers generally possess little significanc
possibly, are too undignified to gain a place in this record. S
the very old ones, whose opinions of constitutional limitations
obsolete as the dodo, say the statute is an unconstitutional in
of individual property rights and liberty; but then, they s
same thing of many other modern regulations of business.

Attitude of This Court.

250 The attitude of this Court gathered in its publish
cisions is difficult to understand and more difficult to
The industrial court statute has been considered in the fol
cases: State, ex rel., Court of Industrial Relations vs. Howat,
107 Kan., decided July 19, 1920; State, ex rel., Hopkins vs.
109 Kan. 376, decided June 11, 1921; Court of Industrial Re
vs. Chas. Wolff Packing Company, memorandum decision file
11, 1921; Court of Industrial Relations vs. Chas. Wolff P
Company 109, Kan. 629, opinion filed October 8, 1921, a
decision of June 10, 1922, in the same case. In the first o
cases objections were overruled to the title, to the supposed
with federal statutes relating to distribution of coal, and that
commingled executive, legislative and judicial functions. Th
declined to consider other constitutional questions raised by
on both sides. The second case (State vs. Howat, 109 Kan.
although involving merely the disobedience of the defendant
to a lawful injunction issued by the District Court of Cr
County, covers a wide field. The opinion delivered by Mr.
Burch is conspicuous in the excellence of the argument supp
legislation for the protection of the public against industria
resulting in hindering, delaying, and stopping the productio
distribution of necessities of life. It is worthy of a disting
place in the legal literature of a period of relaxation of constit
limitations upon the legislative freedom in dealing with
problems.

The memorandum decision of July 11, 1921 states:

251 "(1) That the action can be prosecuted in the n
the court of industrial Relations.

(2) That the act establishing the Court of Industrial Re
operates on both employer and employe.

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(3) That the wages paid employe-s in a packing house is a matter of public concern and the determination of the sufficiency of such wage is a question affected with a public interest.

(4) And that the law does not violate any provision of the Fourteenth Amendment of the Constitution of the United States."

The opinion filed October 8, 1921, (109 Kan. P. 629) presents the arguments and rulings of the court sustaining the memorandum decision of July 11, 1921. The opinion delivered by Mr. Justice Marshall received the approval of all of the members of the Court. It holds:

"(1) The industrial court can maintain this action in its own name.

(2) Obedience to orders of the industrial court fixing wages and hours of work may be compelled by mandamus.

(3) This action as brought does not call for the exercise of legislative power.

(4) Orders of the industrial court do not require the approval of the Supreme Court before becoming effective.

(5) The allegations of an emergency in the complaint filed by employees of the defendant were sufficient to justify the industrial court in making an investigation.

(6) The act creating the Court of Industrial Relations does not violate the Fourteenth Amendments to the Federal Constitution nor deprive persons, affected by its orders under the statute, of their property without due process of law, nor deny to them the equal protection of the law. Employe-s of the industries named in the statute are governed by the orders of the industrial court. Wages of such employe-s are affected by the public interest and may be regulated by the industrial court; and, such orders do not deprive employers or employees of freedom of contract concerning wages in violation of the Fourteenth Amendment to the Federal Constitution, and the classification of the business to which the law applies is not arbitrary nor unjust."

Among the apparently well considered declarations of principles affecting the administration of the act, announced in the opinion, is this (P. 611):

"In all business enterprises affected with a public interest rates and charges and wages are so bound together that they cannot be separated. Rates cannot be completely controlled unless wages are controlled, and wages cannot be controlled unless charges are controlled."

The Majority Opinion of June 10, 1922.

The decision of June 10, 1922, the immediate subject of this petition, did not receive the approval of all of the members of the court. Justice Burch delivered a dissenting opinion in which Mr. Justice Porter concurred. The opinion of the majority was delivered by Mr. Justice Marshall. It decides:

"(1) The industrial court has authority to make an order es
lishing wages and fixing hours of labor of employe-s in a pack
house employing approximately three hundred (300) men, wh
a controversy has arisen over wages and hours of labor, a meet
called to take a strike vote and instead of striking the employe-s'
to submit the controversy to the industrial court and submit s
controversy to that court.

(2) The industrial court cannot make orders to be observe
operators of a packing house plant beyond the matters embra
within the notice given, unless the operators consent that ma
outside the notice be investigated.

(3) Under proper circumstances the industrial court is aut
ized to make an order, temporary in effect, slightly raising the w
of employe-s in a packing plant and fixing the hours of labor
though the plant at the time the order is made is being operate
a loss."

Among the principles announced in the majority opinion is t
"The operators of a packing plant cannot by law be compelled to
the finished product of their plants at a price that will not a
them a fair return upon the investment, but that does not say
those operating the packing plant cannot be compelled by la
pay a living wage to their employees, notwithstanding the fact
the plant is being operated at a loss. An industry of
253 kind that cannot be operated except at the sacrifice of its
ployees ought to quit business. An industry ought no
permitted to recoup its losses out of the wages of its employees w
those employees are in such a condition that they cannot prev
It may be argued that a laboring man is not compelled to work
any particular employer, and that the laboring man can quit at
time and go elsewhere. So far as the law is concerned, this is tr
he has an absolute right to go and seek work in some other pl
but actually, and in fact, it is often impossible for a working
to work in which he is engaged and readily find other work.
nomic conditions are such that, most of the time, when — wor
man finds himself out of work, he must remain out of work
days, weeks, and months, during which time he and his fa
suffer. Many a working man cannot quit when he desires so t
He must continue to work, although his wages are not sufficie
properly feed and clothe himself and his family and educa
children."

These expressions indicate a just solicitude for the welfare o
working man. It is undoubtedly true that it is often impo
for a working man to quit work and readily find other work.
deniably such conditions work individual hardship which mu
cite the sympathy of every humane man. But, what of solic
for the owners of this packing plant? What is to become of th
this plant cannot *to* be operated at a profit? It cannot be m
It is immovable upon the spot where it is now located. If the
ing man experiences difficulty in securing a market for what h
to sell, such difficulty is not comparable with that of the own

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permanent structures and machinery adapted to specific purposes attempting to move it to a new location affording a more profitable market. The language of the court indicates that it does not take into consideration the unhappy plight of this defendant. It cannot move this physical property. It consists of buildings and machinery of all kinds permanently fixed upon the company's land in Topeka, which cannot be moved from place to place. Once a packing house is located it must be abandoned and the machinery junked *is located* if business is found to be unprofitable. To paraphrase this court's solicitude for the workingman:

"It may be argued that a packing house is not compelled to operate and that it can stop at any time and the owners conduct their business elsewhere. So far as the law is concerned this is true—owners of packing houses have an absolute right to go and build their plant in some other place; but actually, and in fact, it is impossible for the owner of a packing plant to cease operating his plant and move to some other place. Actual conditions are such that when the owner of a packing plant finds himself unable to conduct his business at a profit, he must lose the entire value of his property and begin all over again if he has any means of doing so. Many a manufacturer cannot quit operating his plant if he desires to do so. He must continue to operate although his revenues are not sufficient to pay operating expenses."

This is not a new situation. It has — a number of times in litigation, involving regulation of railroads. The Supreme Court of the United States again and again had pointed out that a railroad cannot be taken up and moved, and, therefore, those who have invested money in permanent structures are entitled to the constitutional protection of their property afforded by the Fourteenth Amendment. It is submitted that these considerations effectually dispose of the suggestions in the court's opinion that if this defendant cannot operate its property except at a loss, it would better move it to some other location. Manufacturers continue to operate in the face of losses in the hope and expectation that times will grow better and profit will take the place of loss. The experience of 36 years during which this plant has operated at Topeka leaves ground to hope that if it can avoid burdens which other manufacturers in the same city are not called upon to bear, improvement in general business conditions will enable it to survive. But, nothing could be more certain than the ruin of this property and the loss of the stockholders' entire investment if this court sustains legislature orders placing additional burdens upon it at a time when it is already staggering under the common burden of universal business depression.

The Dissenting Opinion.

The dissenting opinion delivered by Mr. Justice Burch (with whom Mr. Justice Porter concurred) is devoted entirely to a con-

sideration of the facts and circumstances disclosed by the rec
bearing upon allegations in the complaint that an emergency
isted within the meaning of the industrial court act. The views
pressed in this dissenting opinion are:

(1) A controversy cognizable by the industrial court must
related to the nuisance of strife, disorder and waste and, me
public peace, public health, and public welfare generally.

(2) Until a controversy between the employers and employ
engaged in operating a packing house, brings within reasonable
templation a discomforting shortage of food which the defend
produces, public interest does not attach to the conduct of its
ness and the powers conferred by the statute are not called into
tion.

(3) A controversy cognizable by the Court of Industrial R
tions, for purposes not merely of investigation but of regulat
must be definitely related to the subject of supplying the state
necessities of life and must create an emergency respecting
supply. In this case, not only was the fundamental elemen
emergency lacking, but elements which, under other circumstan
might contribute to an emergency, were not present. And un
such a controversy exists the basis for the classification of indus
made by the statute fails and the classification becomes arbit

Perhaps the difficulty in stating the attitude of this court tow
the statute and the orders of the industrial court is apparent f
the foregoing brief and, perhaps, imperfect review of its deci
Readers of the opinion filed in October, 1921, and of the majo
opinion filed June 10, 1922, will be impressed by compar
256 the announcement in the former case: "In all business en
prises affected with a public interest, rates or charges
wages are so bound together that they cannot be separated,"
that, wages cannot be controlled unless charges are controlled,
the announcement in the second case (decision filed June 10, 19
that notwithstanding a packing plant is a business affe
with a public interest, whose charges for its products cannot be r
lated, yet such a plant can be compelled by law to pay incre
wages to its employees, notwithstanding it is being operated
loss. To the average intelligence these two principles are obvio
antagonistic. If it is true that in all business enterprises affe
with a public interest charges and wages are so bound together
they cannot be separated, how, it may be asked, does the cour
the second opinion admit inability to increase the charges the p
ing company shall make for its products and uphold the powe
the industrial court to compel the packing plant to pay incre
wages? Instead of charges and wages being inseparable, as s
in the first opinion, they are violently separated by the second o
ion. Instead of holding that because the law cannot regulate
defendant's charges for its products, it cannot control the wag
pays, as stated in the first opinion, the court in the second opi
approves control of wages while admitting lack of power to co
the charges.

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The foregoing is a part of the difficulty which counsel for the defendant has experienced in attempting to learn the attitude of this court toward the act creating the Court of Industrial Relations and that court. The dissenting opinion of June 10, 1922, further perplexes those who supposed Mr. Justice Burch expressed the settled opinions of all of the members of the court in
257 Howat's case.

A careful reading of the decision in that case shows that the dissenting opinion in the present case, delivered by Mr. Justice Burch, is entirely consistent with what has been supposed to be the settled conclusion of this court expressed by him in June, 1921, defining the emergency jurisdiction of the industrial court. It is also consistent with the language of the statute itself. Section 7 which confers power upon the industrial court, not only to investigate but to regulate, differs widely from Section 21 which authorizes the submission by employers and employees in any industry of controversies concerning wages, hours of employment, working or living conditions, regardless of the origin, nature or possible effects, of such controversy. The dissenting opinion consistently observes the distinction between controversies which involve merely a dispute between employers and employees and controversies which "bring within reasonable contemplation a discomforting shortage in the supply of necessities of life." Naturally it has been accepted by the public generally that the industrial court has no jurisdiction to regulate wages, except in cases where such regulation was essential to prevent "the nuisance of strife, disorder and waste, constituting a menace to public peace, public health and public welfare generally." This conception of the purpose of the statute was fostered by those who promoted the enactment and confirmed by the unanimous decision of this court in the Howat case. In the opinion expressing the views of the majority of the court, filed June 10, 1922, this is all that is said on the subject:

"The petition alleged facts which show that such an emergency as the law contemplated existed and gave to the plaintiff authority to inquire concerning the matters alleged in the complaint. The evidence established facts sufficient to give to the Court of
258 Industrial Relation authority to make proper orders thereunder."

It is true the opinion states that the defendant's employees held a meeting to vote on a strike, but finally concluded to present their controversy to the industrial court. Further than this those who read the opinion are not informed of any facts from which an emergency could be inferred. On the other hand, Mr. Justice Burch says:

"The court now says, in effect, that the evidence taken by Commissioner Noble established the fact that an emergency had arisen such as the statute contemplates. Presumably the court refers to the evidence bearing upon the meager facts stated in the opinion.

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If the court refers to other evidence establishing a statutory emergency, I have not been able to discover it by searching the record.

Since the majority opinion must prevail counsel for the defendant is bound to suppose that the remaining members of the court found evidence in the record to support the allegation of an emergency which Mr. Justice Burch and Mr. Justice Porter were unable to discover. It is very certain that the commissioner appointed to report the facts discovered nothing which would support this allegation or he would have reported the fact. It is also certain that the industrial court discovered nothing indicating an emergency within the meaning of the previous decisions of this court, emphasized by the dissenting opinion, for, it is its statutory duty to find facts which support its orders, and it made no finding of emergency. Counsel for the defendant is bound by his professional duty to say although present at all of the hearings he knows of no evidence showing anything except an ordinary business dispute between employer and a few employees in a small packing house, the operation of which was not interrupted, nor threatened with interruption, for a single moment. Moreover, the record shows beyond possibility of
259 question that if the dissatisfied employees had stopped work there was an abundance of competent men at hand seeking employment to take their places. In addition to the testimony given by Mr. Wolff quoted in the dissenting opinion, attention is called to the following:

Q. What is the fact, Mr. Wolff, as to the company being able to go on with its business upon the payment of the wages that it is now paying?

A. Be absolutely no difficulty; as a matter of fact we have more applicants than jobs and did have this morning. For instance, about thirty men inside of the dock looking for positions this morning.

Q. Have you had any difficulty at all in getting all the employees you require for the operation of the plant at the wages offered in the plant?

A. Absolutely no difficulty whatever.

(Testimony of Chas. Wolff, Jr., Vol. 1, p. 149 of the testimony before Commissioner Noble.)

Mr. Wolff further testified:

Q. Have you ever had any difficulty with your employees?

A. Well, aside from one difficulty we had in 1918; not serious.

Q. Has the plant ever been stopped or shut up and quit?

A. Never for a day.

(Testimony of Chas. Wolff, Jr. Vol. 1, p. 146 taken before Commissioner Noble.)

Mr. Wolff further testified that the only interruption in the company's operations in his experience was during the strike in 1[illegible]. "It lasted for about, as I recall now, four or five weeks. Of course

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we were handicapped on account of about one hundred and seventy-five employees out on the strike. The balance of the employees, about one hundred twenty-five or one hundred fifty, remained on the job, continued operations, but not to full capacity, of course." And that he had heard no complaint from employees excepting of course, the dispute brought to his attention late in December, 1920, or early in January, 1921. The allegation in the complaint (petitioners' abstract, page 4-5) is as follows:

"That the failure, neglect or refusal of the respondent to settle the matter and things involved in said controversy will lead to other and further disputes between said parties, which will endanger the continuity efficiency and service of said packing plant and the operations of the respondent in control of the same, and will produce industrial strife and disorder and endanger the orderly operation of said packing plant under the control of the respondent and will thereby endanger public peace, public health and general welfare of the State."

At the hearing before, the Industrial Court only a few of the employees supposed to be interested in the alleged controversy testified. Not one of them indicated the slightest possibility of trouble. W. E. May, one of the complainants, stated that his grievance was that he had been put on a lower job and was not getting sufficient pay. (Testimony before the Industrial Court, transcript page 50.) Hunter Blair said that he ought to have a premium in his wages. He also had no grievance except with reference to wages. Lawrence, Bosick, Jimerson, Reynolds, Wilson, Nelson, Martin, Shaffer, Morozo and Sawyer were the other witnesses. Not one of them evinced the slightest disposition toward disorder. Not a syllable of testimony was brought out in the examination by counsel for the Industrial Court that they intended to leave their jobs or that there was anything in their demeanor or purpose to endanger the orderly operation of this plant.

Before, the Commissioner, George Laverty, Division Superintendent, testified. He has supervision over fifty of the employees affected by the order and has been with the company 24 years. (Vol. 3, p. 327.) (Transcript testimony before Commissioner Noble.)

He was asked:

Q. Do you know of any dis-atisfaction among the employees that has existed during the last six months?

A. Never heard of any.

Q. Have you lost any men in your department or under your control because of disputes about wages?

A. No, sir.

Q. Have you had any difficulty in securing all the help you want at current wages paid by the packing company?

A. Not a bit.

Mr. Brandon, a foreman of the casing department, testified:

Q. Have you had any dissatisfaction in your department with the employees?

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A. Not that I could see at all. I have a good many men. I h
had ever since I have been foreman. (He testified that he had b
foreman for sixteen years.)

Q. Has anybody in your department threatened to quit on acc
of wages?

A. Might hear that sometimes but they never quit.

Q. Complain some about wages do they?

A. Yes, sir.

Q. Do you know of anything that happened in your departm
that threatened interruption of operation?

A. Never heard of any.

(Testimony of Brandon, Volume 3, page 331, testimony
fore Commissioner Noble.)

Mr. Bratton, another foreman, testified. He had been with
plant about three years. Asked if the plant's operations have b
interrupted at any time except in 1918, he answered: "Believe th
the only time."

Q. Have you lost any men lately on account of wages?

A. I haven't. No, sir.

Q. None in your department?

A. No, sir.

Asked if the men in his department were satisfied with their
he said: "Seem to be."

Q. Were there any complaints of any of them?

A. No.

Counsel for the defendant believes that upon this point the
fendant's case may safely rest upon the statements of Mr. Jus
Burch concurred in by Mr. Justice Porter that they have
262 unable to discover any evidence in the record which sus
a finding that an emergency existed sufficient to justify
regulating order under consideration.

Perhaps the Court may see fit, in a memorandum, to point
the testimony which sustains the statement in the opinion: "
evidence establishes facts sufficient to give to the Court of In
trial Relations authority to make proper orders thereunder."
the absence of any indication of where this evidence can be fo
the conclusion is forced upon counsel that this Court now
that the Court of Industrial Relations has jurisdiction to inv
gate and make regulating orders upon complaint of a mere dis
between an employer and his employees, involving merely a
tion of the sufficiency of their wages. And, that the employ
relation to the State's supply of necessities of life, his ability
carry on his business unaided by orders of the Industrial C
his ability to make agreement with his men satisfactory to b
and, generally, the uninterrupted operation of his property
the entire absence of fact or circumstance related to strife, dis
or discomfort to the people—have no bearing upon the indus
court's right to regulate the wages and interfere in the man
ment of the employer's property. The effect of such a rule

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left to the letter judgment of this Court. It is safe to say that if it had been suggested to the Kansas Legislature that the Court of Industrial Relations was authorized by this statute to do what has been approved in this case the act would not have received a single affirmative vote. It is concluded, therefore, that the legislature had no such intention. If the language of the act be the proper source of interpretation of its meaning, a ruling that a mere dispute in a small plant, not involving any of the elements of discomfort, disorder or inconvenience to the public, strikes out of the act all of the qualifying and limiting words found in Sec. 7, and leaves that section and Sec. 21, identical as to the nature of controversies of which the Industrial Court is given plenary jurisdiction. As said by Mr. Justice Burch, such a rule destroys the basis of classification upheld by this court in the opinion of October, 1921. The defendant's counsel submits that this ruling reopens the question whether a state may arbitrarily select employers and employes in certain industries out of the whole body of employers and employes, and confer a jurisdiction upon a tribunal to settle their disputes having no characteristic difference from like disputes of employers and employes in other industries.

A re-examination of the Constitutional Objections to the Enforcement of the Industrial Court's Order is Respectfully Requested.

Stripped of inference and conditioned by actual facts disclosed by the evidence, the decision of June 10, 1922, holds it to be within the constitutional competency of the Kansas legislature to authorize this administrative, or legislative, tribunal to take this defendant's property and give it to its employees for the alleged purpose of affording such employees such compensation for their labor as the public welfare, declared by this Court, requires. It is said, public necessity demands that employees engaged in the essential industries shall be paid sufficient compensation to enable them to live in the manner prescribed by the statute creating this court, and, that this public necessity is superior to the constitutional right to the owner of property employed in one of the essential industries, to receive a fair rate of return upon his capital invested therein. Nothing can well be more certain than that no such superiority is announced by the statutory language declaring the state's public policy towards employers and employees engaged in such industries. It would be impossible to select clearer and less ambiguous words than those used by the legislature in sections 8 and 9 of the act creating the industrial court. In section 8, defining the nature of the orders the industrial court is authorized to make fixing terms, conditions and wages, it is said:

"Provided, all such terms, conditions and wages shall be just and reasonable and such as to enable such industries * * * to produce * * * their products and continue their operations and thus promote the general welfare."

That is to say, the industrial court is authorized to make changes in the matter of employment and reasonable minimum wages, upon

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condition that the changes it makes shall be such as to enable
industry to continue with reasonable efficiency to produce its pr
ucts and continue its operations. The office of a proviso in stat
granting powers is to limit general language going before; a
therefore, it must be concluded that the legislature never inten
to grant to the industrial court power to fix minimum wages wh
would impair the ability of the employer to continue his operati
and produce his products. Accentuating this intention Sectio
announces that the limitations in Section 8 are in furtherance
the state's policy towards these industries. It says:

265 "It is hereby declared necessary for the promotion of
gen-ral welfare that workers engaged in any of said ind
tries * * * shall receive at all times a fair wage and h
healthful and moral surroundings while engaged in such labor, a
that capital invested therein shall receive at all times a fair rat
return to the owners thereof."

Thus, and in these words, the legislature declares the state's pu
policy. Does the last decision of this Court give effect to these
ambiguous declarations? The opinion answers this question in
negative. Strangely enough, nowhere in the opinion can be fo
a reference to these sections. Stranger still, the declarations m
by this Court, of the state's policy towards these industries emas
lates the expressed intention of the legislature and decides as tho
the declarations in the statutes read: "It is hereby declared ne
sary for the promotion of the general welfare that workers eng
in any of said industries shall receive at all times a fair wage
have healthful and moral surroundings while engaged in such l
without regard to the right of the owner of such an industry t
ceive any return whatever upon his capital invested therein." A
that, "terms, conditions and wages prescribed by the industrial c
shall be just and reasonable to the employes without regard
whether such terms, conditions and wages will enable the indu
to continue its operations, produce its products and thus pro
the general welfare."

Generally, previous decisions of this Court in the same cas
regarded as the law of the case. The last opinion interpreting
statute and defining the powers conferred upon the industrial c
seems to counsel for the defendant to be directly oppos
266 the law of this case declared in the opinion and decisio
October 8, 1921 in this case; and to the language of
statute as well. Pressed with the argument that the statute, as
ministered in the order under consideration denied to this def
ant the equal protection of the laws in the violation of the equ
clause of the fourteenth amendment, this Court sustained the s
gation of the four industries enumerated in the act from other
dustries in the following language (Court of Industrial Rela
vs. Packing Company, 109 Ks. 629-46):

"If the state can make regulations for the government of a
ness affected with a public interest, it ought to be able to en

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t regulation to the wages paid to the employes of that business. e flow of food supply from producer to consumer should not stopped by conditions produced by industrial unrest arising out wage problems. If that flow is threatened and the state under police power can remove the danger that should be done. That d that alone the Kansas Industrial Court law attempts to do * * *. The successful operation of the four classes of busi- s named, one of which included packing houses, is necessary the peace, comfort and welfare, and particularly the health, the people. These industries are subject to interruption on ac- nt of conditions now existing. Those engaged in these indus- s constantly work in the presence of danger. Long hours of tinuous employment will render them less able to avoid those gers because of the weariness that overtakes anyone who for a g period of time continuously works at any one thing. Con- nt employment at the same task for long hours day after day ill render the worker both physically and mentally less able to form his labor. Protection to the workman in these industries mands that his daily hours of labor be not so extended as to pre- turely exhaust his powers."

The legislature had power to enact the industrial court law, and make it apply it to the class of business named therein, without luding any other class."

pon the question whether the proof showed an emergency suffi- nt to justify an exertion of the regulating power of the indus- l court, the court's last opinion says:

"The defendant's plant is a small one and it may be admitted t, if it should cease to operate, the effect on the supply of meat d food in this state would not greatly inconvenience the people Kansas; yet, the plant manufactures food products and supplies t to a part of the people of this state and, if it should cease to rate, that source of supply would be cut off."

The commissioner reports that if the industrial court order is put into effect this plant must cease to operate and, of urse, its contribution to the flow of food supply, declared essential the public welfare, would be lost; not because of industrial unrest ing out of wage problems but because the order in question places burden upon the operation which the commissioner reports, is reasonable. He says (4th conclusion of law):

"The tendency of the enforcement of the order would therefore to deprive the stockholders of that much property and to hasten ultimate closing of the plant, which is inevitable unless business operating conditions can be improved."

d he adds:

"An increase (of wages) is not justified nor authorized by the in- trial court law, and execution of those paragraphs of the order ld be unreasonable and should not be enforced."

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In its last opinion this Court said:

"If the plant cannot operate without so doing (paying less wa
than prescribed by the Industrial Court) it is only a question o
short time until it must stop. If the plant is badly located on
count of transportation to its market or from the source of sup
of its raw material, it ought to be moved to where these handi
will not exist." (Parenthetical words not in opinion.)

This is the resulting situation: First, this court held that pro
tion of the flow of food supply from producer to consumer is, al
what the industrial court act attempts to do. Next, it said, the ne
sity for protecting the defendant's small contribution to this flo
food supply created an emergency, threatening the public welf
sufficient to sustain an exercise of the industrial court's extra
nary powers. It learned from the report of its commissioner
the order made in this emergency is unjust and unreasonable;
if enforced, will compel the defendant to go out of busi
268 and, consequently, cease fur- — such small contributio
the flow of food supply. Whereupon the court directs
the order be enforced, saying, in effect: "Let the defendant cease
ducing food and go elsewhere, unless it can arrange its affairs s
to obey an order which compels it to stop furnishing a part o
good supply, although interruption to the flow of that food sup
threatened by the possibility that defendant might be forced to c
operations, created an emergency affecting the public welfare
which the industrial court was authorized to deal." The re
given for this depriving the people of defendant's small contr
tion to the "Flow of food supply" is, the welfare of employes
gaged in operating defendant's food producing plant. Is it
sible that this Court interprets the statute to mean that claim
employes for increased wages must be allowed at the expense o
people's supply of a necessity of life? Can it be that in its ac
operation this statute destroys the very thing it was designed to
tect?

We were told that controversies between labor and employe
food, clothing and fuel industries affected the public, becaus
frequently resulted in public discomfort by threatening the flo
the supply of necessities; and, that this act was "a social prophyl
to benefit the public not immediately concerned with such dis
Now we learn that the flow of supply *is* of necessities from pro
to consumer is not so important as the sufficiency of wages of
men employed in these industries, and, that the real, paramoun
ject and purpose of this statute is to secure to labor suf
269 compensation to enable workers to live in the manne
scribed by law; that, this statute not only permits b
quires that producers of necessities of life who cannot pay such
and continue to produce their share of the food supply, shall g
of business. A statute having such an effect is indeed "a social
phylactic." A few doses of the ingredients prescribed and adm
tered to this defendant will convince the most obstinate believ

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legislative materis medica that even the wonderful vitality of an invalid public cannot withstand the paralyzing effects of such treatment. Who knows? Possibly the workman himself will protect against a philanthropy which puts him out of a job by destroying his employer's business at a time when "economic conditions are such, that most of the time, when a working man finds himself out of work, he must remain out of work for days, week-, and months during which he and his family must suffer." (Quotations is from the opinion filed June 10, 1922.) Whatever else may be concluded from the court's final decision in this case, one thing is certain: The proximate, direct cause of the stoppage of defendant's contribution to "the flow of food supply from producer to consumer" is not its inability to carry on its business with employes satisfied with the wages it can afford to pay, but because it is forbidden to do so. It is the administration of this statute, exemplified in this order, not industrial unrest arising out of wage problems, which closes the long and useful corporate life of this Kansas enterprise. For a full generation it has continued its business with scarcely a ripple of labor trouble. It is struggling like thousands of other good citizens to keep going. It succeeded in weathering the storm of excessive high wages prevailing in 1920 at a great sacrifice on the part of its stockholders. Is it now to be destroyed by an act of the Kansas Legislature which positively and specifically assures owners of such industries that wages prescribed under its authority shall be such as to enable them efficiently and successfully to continue to produce necessities of life; and, that they are entitled to receive at all times, a fair rate of return upon their invested capital?

In the opinion of counsel for the defendant the quoted parts of sections 8 and 9 of the industrial court act, and the declaration of the public policy found in the last opinion of this court, cannot both stand, either the mandatory language of the legislature must be ignored and the legislature will be defeated, or this court's last declarations concerning the state's public policy towards employees and employer in the so-called essential industries must be set aside. Attention is respectfully directed to what may be termed the traditional policy of this court in dealing with legislative declarations of public policy. Uniformly, the rulings of this court have been that its sole function is to interpret and enforce statutes; that it has no power to legislate and that whatever may be the court's views of the wisdom of legislative declarations, it cannot change them, but must leave amendments to, and changes of, public policy to the people as represented by the legislature. If this rule be followed in the present case the court will approve the conclusion of Commissioner Noble, that, "There is nothing in the act justifying the taking of the property of the employers in one of the designated industries for the purpose of enabling the workmen to receive a fairer wage, any more than the taking of fair wages from the workmen to enable the employer to earn a fairer return on his invested capital."

Controlling Decisions of the Federal Supreme Court.

It is to be regretted that the majority opinion does not po
the facts and circumstances which distinguish this case from
cisions of the Supreme Court of the United States limiting th
and operation of the statute and decision which is the proge
this legislation—the Adamson Act held valid in Wilson vs. Ne
U. S. 332. Authority for the industrial court act is said to be
in that decision. It is cited and quoted in every decision
court concerning this statute, except the last. It upheld an
congress which continued in force wages of employes of al
mon carriers engaged in inter-state commerce. It did not i
the pay of such employes. It was held valid by a bare majo
one member of the Supreme Court as within the powers of c
to regulate inter-state commerce. One of the majority uph
the act was Mr. Justice McKenna, who wrote a special conc
opinion in the course of which he said (page- 263, 264):

"To a carrier a wage law is but an item in its accounts a
quiring, it may be an adjustment of its operations, the expens
recompensed through its rates. If it be said that rates can
changed at will but only by permission of authority, I cannot
that permission will not be given if it be necessary to fulfill th
mand of the law. Indeed, if not given the law might encount
stitutional restriction."

272 The majority opinion in Wilson vs. New was delive
Mr. Justice Holmes, who also delivered the unan
opinion of the court in the subsequent case of Fort Smith R
vs. Mills, 253 U. S. 206, which involved the application
Adamson Act to an insolvent railway company operating at
The opinion says:

"The bill in Wilson vs. New raised only the general object
the act that were common to every railroad. In that case
not necessary to consider to what extremes the law might be c
or what were its constitutional limits. It was not decided,
stance, that Congress could or would require a railroad to co
in business at a loss. See Brooks-Scalon Co. vs. R. R. Comm
U. S. 396. It was not decided that there might not be circum
to which the act could not be applied consistently with th
amendment or that that act in spite of its universality mus
strued to reach literally every carrier by railroad subject to
to regulate commerce. It is true that the first section of the
purports to apply to any such carrier and the third to the con
tion of railroad employes subject to this act. But the statute
edly was enacted in haste to meet an emergency and the
language necessary to satisfy the demands of the men need
taken to go further than the emergency required, or to hav
intended to make trouble rather than to allay it."

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After pointing out the solvent condition of the railroad, that it had succeeded in making satisfactory terms with its men, and that it was unable to pay interest on its mortgage security, the opinion continues:

"We think it reasonable to assume that the circumstances in which, and the purpose for which the law was passed import an exception in a case like this."

Mr. Justice Day, Mr. Justice Van Devanter, Mr. Justice Pitney and Mr. Justice McReynolds said: that they agreed with the decision limiting the effect of the Adamson law as stated, but adhered to the views concerning the constitutionality of the act expressed by them in Wilson vs. New. There is nothing new or startling in such decisions. The power of the state to regulate public utilities conferred in general terms upon railroad and other commissions, similar in their functions to the industrial court, has been upheld in a great variety of cases and circumstances; but these general statutes have always been subject to exceptions in particular cases and their validity is no better settled than the rule that in their administration, commissions and other tribunals cannot make orders the effect of which is to deprive the owners of property used as a public utility, of a fair return upon the investment. It is this result and effect of the orders made under valid statutes which render them void; not the means or details of the orders themselves, or a peculiarity of their application. They are void because they take the property of one individual and confer it upon the public without the reasonable compensation, which cannot be done by legislation. This exact situation was presented to the Supreme Court of United States in Regan vs. Farmers Loan & Trust Company, 154 U. S. 362, 409, 410. Delivering the unanimous opinion of the court Mr. Justice Brewer, among other things said:

"They who invest their money in railroads take the same chances that men engaged in other business do of making a profit from the carrying on of their business * * * some of the roads in the State of Texas have been operating at a constant loss, but such possibilities of loss are simply the natural results of all business freely carried on, against which the law is powerless to afford protection. Very different are the considerations which arise when the strong arm of the law is invoked to compel parties engaged in legitimate business and business which cannot be abandoned at will, to so reduce their charges for service as to make the carrying on of that business result in a continued loss. In the one case the law is powerless to prevent injury; in the other it is used to work injury."

Pressed with argument by the state that in the interest of the public welfare the state itself might operate the railroads; just as in this state it might be said that under section 20, of the industrial court act, the state may take over any of the essential industries and operate them in the public interest, the opinion answered the argument and contention:

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274 "But the parallel is not good. In the case suggested
loss is cast through taxation upon the general public, and
bear their proportionate share of that loss which is incurred
securing a common benefit, while the scope of this legislation is
secure such common benefit at the expense of a single class.
equal protection of the law—the spirit of common justice for
that one class should by law be compelled to suffer loss that oth
may make gain."

In an earlier part of the opinion it is said (page 309):

"The equal protection of the law, which by the Fourte
Amendment no state can deny to the individual, forbids legi
tion, in whatever form it may be enacted, by which the prope
of one individual is, without compensation, wrested from him
the benefit of another, or of the public. This, as has been cl
observed is a government of law, and not a government of men,
it must never be forgotten that under such a government with
constitutional limitations and guarantees, the forms of law and
machinery of government, with all their reach and power, must
their actual workings stop on the hither side of the unnecessary
uncompensated taking or destruction of any private property, leg
acquired and legally held."

It is no answer to these authoritative declarations of constituti
law to say, as the majority opinion in this case says, "public wel
likewise demands that the working man engaged in the produc
of the things that minister to the comfort of all must be paid s
compensation for his services as will enable him to live in the m
ner described in the Court of Industrial Court Act." If public po
demands that laboring men shall receive sufficient compensatio
enable them to live in the manner suggested by this language,
burden of sustaining this policy should be cast upon the public
not upon a single individual.

The facts in this case, as found by the commissioner selected
appointed by this court, cannot be ignored. The legislative
under consideration found this industry carrying on its busine
a constant loss, a vicissitude of business which the law is powe
to remedy. In this condition this order undertakes to impos
additional loss by increasing the operating expenses, and thereb
creasing the deficit, to the extent of approximately $24,000.00 a
or $2,000.00 each month. Justification for this result and effe
the order is sought in the demands of public policy
275 laboring men shall live according to a certain stan
Presumably this requirement of public policy will cont
At the rate of $24,000.00 per annum it is only a short period
the entire property of this defendant will have been transferre
legislative fiat from its owners to the individual employes. In
meanwhile the owners are deprived of any return upon their in
ment. Whether the stockholders are depending upon such re
for their living appears to be an immaterial circumstance as
pared with the public necessity of furnishing the employes

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fficient for their wants. If any vigor remains in the provisions of the federal constitution that no person shall be deprived of his roperty without due process of law, or denied the equal protection of the laws, this legislative order is void; not because the state may ot have the power to regulate these essential industries, but because in the course of the exercise of such power it attempts to take the roperty of the stockholders of the Chas. Wolff Packing Company nd transfer it to their employes without compensation.

Counsel for the defendant studiously has refrained from again burdening this court with his views concerning the industrial court act expressed in the brief filed on July 6, 1921. He deems it proper to say that, notwithstanding his profound respect for the learning and ability of the judges of this court, he finds nothing in the arguments in its decision to change the views and conclusions expressed in that brief. The present ruling accentuates and crystallizes the conviction that as interpreted by the majority opinion of June 10, 1922, this act is void because it encounters the fourteenth amendment.

In the brief filed in response to the question submitted by this court the defendant requested that in its final determination of this case the court "expressly decide whether under the facts, as found by the commissioner, the order of May 2, 1921, made by the Court of Industrial Relations, deprives this respondent of its property without due process of law and denies to the respondent the
276 equal protection of the laws afforded owners of other private property in the State of Kansas." It is much to be regretted that the court has not seen fit to comply with this request. It is obvious that this packing company must exhaust all of its legal remedies before submitting to the inevitable destruction of its property, and, therefore, in the event this court declines to revise its opinion this case must be removed to the Supreme Court of the United States and the opinion of that tribunal obtained upon the constitutional questions raised upon the record. Counsel is satisfied that this Court is anxious for a final determination of the validity of this statute and of this order, and realizes that such final determination must be made by the Supreme Court of the United States. In that court it would be convenient, as well as desirable, if this court would state the facts which it considers justify the opinion and decision of June 10, 1922. Such a statement of facts, assuming, of course, that it will conform to the commissioner's report and the evidence, would save large expense in preparing a transcript and more clearly present the arguments of the opinions of the majority of this court upon the law as applied to such facts.

A Question of Practice in Mandamus Cases.

277 There are matters of practice suggested by the Court's ruling that the order of May 2, 1921, in the form promulgated by the industrial court, cannot be enforced, because certain parts of it were made without jurisdiction. In such circumstances the question arises whether the order now confirmed is this court's order or the order

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of the industrial court. Hitherto it has been supposed that a pu utility, or public officer, called upon to respond to an alterna writ of mandamus, safely could rest upon the invalidity of any p of the command which he was called upon to obey. According the decision now rendered the court finds that this defendant justified in refusing to obey the order served upon it. But was justified in refusing to obey certain parts of that order. In o words, the plaintiff has not succeeded in showing that the indus court's order should have been obeyed. If the peremptory wri mandamus shall be allowed requiring the defendant to obey a of this order, it is very certain that the order which the defen must obey is not the order which the industrial court sought compel it to o' ey. Nothing in the alternative writ, nor in the o entered by the industrial court, justified the packing company segregating some parts of the order from other parts, obeying and refusing to obey others. From the previous practice in court it would seem to follow that a plaintiff in mandamus be denied relief when the command which he seeks to enf cannot be affirmed as a whole. It seems to counsel for the defe ant that the result of the court's conclusions, that parts of this o are invalid should be a denial of the peremptory writ. Accordin counsel for this defendant asks that this petition be considered a motion also for an order denying the remedy of mandamus bec the order as made is not enforceable.

278 The defendant thinks it proper also to advise the c that in the event the decision of June 10, 1922, shall be the final judgment of this court certain details concerning the formance of the order may be retained for further consideration. is not thought proper or necessary to burden this petition w matters which may be involved in such application.

Counsel for the defendant avails himself of the opportunit assure the court (if such an assurance is necessary in view of many appearances before it) of his profound respect for all of court's opinions and decisions. That he should sometimes di with the court's opinion of the law is one of the great privileges advantages of his profession, but that such differences should him into disrespect is far from his conception of his profess duty. If, therefore, the court should find in this petition lang which might be deemed criticism of the court's conscientious v it is hoped that such language may be attributed to the zeal of c sel rather than to any intentional disrespect. D. R. Hite, Co for Defendant. Topeka, Kans., June, 1922.

279 And thereupon on the 8th day of July, 1922, the said preme Court entered an order overruling and denying petition for rehearing and entered the following judgment:

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In the Supreme Court of the State of Kansas, Saturday, June 10, 1922.

(Caption omitted.)

JOURNAL ENTRY OF JUDGMENT.

This cause comes on for decision, and thereupon it is ordered and adjudged that the writ of mandamus prayed for be allowed, and that judgment herein be entered in favor of the plaintiff and against the defendant. It is further ordered that the clerk of this court issue a peremptory writ to the defendant commanding said defendant to put into effect those parts of the order of the Court of Industrial Relations numbered 2, 3, 4, 9, 11, 14, 15, 17, 18, and 19. It is further ordered that the defendant pay the costs of this case in this court taxed at $— and hereof let execution issue.

APPENDIX.

ABSTRACT OF EVIDENCE BEFORE THE COURT OF INDUSTRIAL RELATIONS.

(The page numbers referred to herein are pages of the transcript of evidence before the Court of Industrial Relations.)

Mr. Jackson, as attorney for the complainants, read the complaint and made a short opening statement. A portion of this statement is as follows:

"Now, I believe that covers substantially the contention of these people. I might say in addition, as bearing upon the controversy, showing that a real controversy does exist, that these people came to the office of the court early in January and urged the seriousness of this situation, many of the employes desiring at that time, if the law permitted it at all, to discontinue work on account of their unfair treatment in this plant and I have not any doubt but they would have done so had they not been counselled and decided to present this controversy to the Court. That condition has grown rather worse than better during all of the time the suit has been pending" (pp. 9-10).

Mr. Hite, as attorney for the Charles Wolff Packing Company, read the answer and made an opening statement, a portion of which is as follows:

"The Court will be invited, from the evidence on those facts, to conclude that conditions over which none of us had any control, growing out of the disastrous war, have produced a state of conditions or, perhaps, induced the employes of the Charles Wolff Packing Company for the first time in 1918 to come to an open break with their employer. Mr. Charles Wolff, who established this plant, was succeeded by his son, Charles Wolff, Jr., a man who was born in this

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city. I stated to the Court a while ago Mr. Wolff is not here becaus
of the death of his grandmother, Mr. Charles Wolff, Senior's mother,
who lived to the advanced age of 94 and died in Cleveland day be
fore yesterday or perhaps it was Monday. Mr. Wolff will be here
and give Your Honors the facts concerning the history of this little
institution here that has grown from a butcher shop, as the evidence
will show, to the purchase of 125,000 hogs a year and approximately
7,500 cattle and it is affording at the present time a market for the
farmers and stock raisers in this immediate vicinity which the evi
dence will show is most asvantageous in the fact that it is cheaper
the prices which the packing company can afford to pay, an averag
of 10 cents a hundred pounds less than the Kansas City market, it
a profitable thing for these farmers and the evidence will show, may
it please Your Honors, that without any sort of friction whatever
this little plant has run along in the manner that I have stated
(p. 20).

W. E. May, a witness called by the complainants, testified substan
tially as follows:

I have lived in Topeka about 30 years and am one of the em
ployes of the Wolff Packing plant and one of the complainants. My
duties are that of butcher, painter and glazier, and also sign write
and decorater, and have been employed by the Charles Wolff Pack
ing Company 22 years. At the present time I am butcher and
have charge of the bacon trimming and ham skinning and tra
ming. I have been president of the local union since Jan
283 ary 1st. The negotiations that led up to the present con
troversy were as follows: We arranged our new contra
through the local union, a committee was appointed, and we pr
sented it as we were hurried, along the line by Mr. Sheehan, o
superintendent. He is the officer of the plant who is in charge
the working people and hires and discharges them. After a perio
of about ten days Mr. Sheehan had a meeting in one of the rooms
the plant, inviting all the employes and foremen, said there would
no more contracts signed. Right then and there is when he ma
his cut on wages and took away all of our privileges we had, our eig
hour day, our guarantee per week. The meeting of the employe
with reference to the new contract was about the 14th of January
It was an open meeting for all employes, but I was not there. I di
not know anything about the meeting. I was receiving 65 cents
hour, plus 5 cents bonus, on an eight hour basis, and am now rece
ing 55 cents an hour without the bonus. We have no guarantee no
The work is all the way from one to fifteen hours, any time they wa
to. Several times I have put in ten and twelve hours since this ne
order has been in effect. After the general meeting of employe
about January 14th the committee of which I was a member pr
sented a notification, giving them ample time to make their decisio
We had presented our proposed contract before we gave this notic
We served this notice upon Charles Wolff personally. He said h
would like to have us meet his lawyer and have a talk with him.

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told him, just like I told Mr. Sheehan, we were not taking our grievance to his lawyer. It had not been our practice and we were not going to start it now. It would not do any good, would just simply get into a conversation. The matter ended there. Under the new contract some of the wages are the same, they did not make a cut clear through the house.

Cross-examination:

I have been a member of the union about two years. The union does not say anything about the wages of painters. What the union does is to make certain claims for wages in particlar occupations, such as meat cutter. One of my main grievances is they have taken away all my privileges I have had. For instance, they have taken the eight hour day away from me and the guarantee per week. They also cut me 15 cents per hour. I was not one of the committee men who prepared the new contract, but agreed to the rates fixed in it. They have transferred me recently to work paying a lower wage.

At this point it was admitted that the following is the notice which was posted on the clock by the Wolff Packing Company:

"Notice.—All employes will please consult their foremen for new rates of pay which will be effective beginning Monday, 7 a. m., January 17, 1921.

Notice.

"Effective January 17, 1921, overtime will not be paid except at regular rates per hour. The rule of time and a half for overtime is hereby abolished. (Signed) Charles Wolff Packing Company, by C. W. Sheehan, Superintendent."

284 Mr. W. E. MAY was recalled as a witness for the complainants and testified:

"There was a change in management about a year ago."

"Q. Was there any actual change in ownership?"

Mr. Hite: "There was no change in ownership. The Charles Wolff Packing Company owns it as they always did; some change in the stockholders" (p. 66).

Q. "You may state, if you can, Mr. May, when the change, if any, occurred in the foremen or the superintendent of the factory down here after this change in ownership of stock.

A. That has been one of the greatest drawbacks and it is, I think, amongst the employes of running in new foremen from Kansas City and running our foremen down that have been there for years and are competent men, giving them high wages and coming in there and running their business to suit themselves, in a driving way, something we are not used to. That is one thing.

Judge Huggins: Well, now, when did this occur? That is the only point now, when did this change take place, Mr. May?

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A. Well, we have had a new cattle foreman, and the cutting and killing foreman and curing foreman, possibly it has been 5 or 6 months, possibly longer than that—that long anyway.

Q. What became of the old foremen?

A. Put them back on the hourly rate, some of them they fired.

Judge Wark: Did they give the foremen any reason that you know of? Do you know whether any reason was given at the time they were fired?

A. I could not say as to that, what their reason was" (pp. 69-70).

Some of these foremen had been employed for 30 years. These men were in charge when the satisfactory condition between employes and employers existed, of which Judge Hite spoke this morning.

Cross-examination:

I was not one of the employes that struck in 1918, but know of the fact that there was a strike. That strike took place under the old management. When the new management took hold, Mr. Wolff was to be president a year. I know Mr. Harris, who was general manager of the plant. He has been reduced in his rank. I understand Mr. Bartman came and took his place. I knew Mr. Sabin when he was here, and understood he had some difficulty with the management when he retired. I know of a good many other changes in the management of the plant. We have had division superintendents put on, we have had foremen, our big difficulty under different
283 management, the old foreman said: "Come on boys, we will do the work." These fellows stand around with a white coat on, do nothing, and say: "Go to it," and whoop and hurrah all day long like we was cattle. Mr. Sheehan and I have had a few meetings that were not very pleasant. About every time I approach him he don't meet me with a smile; he meets me with a very disliking countenance. I have not found any interference from him in doing my work, but it seems like I cannot do it satisfactorily (pp. 27-87).

Hunter Blair, a witness called by the complainants, testified substantially as follows:

I am treasurer of the local union and have held that position two years. I am not an employe of the Wolff Packing Company at this time, but was at the time this suit was begun. Had been employed ten years. To a certain extent I had to do with the negotiation leading up to this suit in fixing the agreement ready to present to the company. I attended one conference between the company's officers and officers of the union. When the contract had been presented and we found an error in it I went with Mr. May to Mr. Sheehan and asked him to rectify that mistake. We heard no more from him but the following day when he gave his notice he called the men into the dressing room and said the company had been operating at a loss and was forced to cut wages at that time. Mr. Sheehan was present representing the company, and a great number of the employes, but

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not all of them. Mr. Sheehan addressed the employes and told them that the plant had been operating at a loss for the past year and they could not at this — sign a new wage agreement, and that the wages must be cut and the hours also lengthened, and he could not tell exactly right out what every man's wages would be at that time, but if they would call at the superintendent's office, or the foreman's they could tell them. The working people were not given any chance to reply to this, that I know of. He said he could not sign a new contract at that time with the employes. I know that the committee had called upon the company two or three different times in negotiating the wage agreement, but they could not get any answer from it. I was not present at any of these meetings. I have personally worked upon a great many cases since we started collective bargaining two of three years back. I have a letter from Mr. Patterson telling how the contract of 1920 came about, and that letter is addressed to C. E. Swartz, president Mr. H. Blair, secretary, and Mr. O. Nelson, committee of Local No. 176 of the Amalgamated Meat Cutters and Butcher Workmen of North America and reads as follows:

"Due to the great amount of dissatisfaction now existing throughout the plant and with a view of eliminating inequalities, we would be pleased to have a new schedule made covering the rates of pay of the various jobs and the volume of work we may expect to receive for such compensation.

286 "Your former agreement did not state classes of work or say how much work could be expected of the various jobs.

"If this meets with your approval, we would be pleased to have you submit the same at your earliest convenience and you may rest assured that you will have our hearty cooperation. We would like to have these figures at your early convenience in order that we will have time to readjust and correct any differences that may arise, making the new schedule effective may 1, 1920. In this manner we hope to avoid such difficulties as came up today, which causes the employes and employer a loss. Yours very truley, (Signed) The Charles Wolff Packing Co., by L. L. Patterson, Supt." (P. 99.)

I quit work because the pay was reduced and the work increased, and we were required to do the work over on our own time. We had so much trouble in this department and it got so burdensome we decided we might as well line the job up right. We went to Mr. Sheehan and told him we did not figure on running away and leaving him with this meat on hand. We were going to give him a chance to say, and ask him what he wanted to do. He said he couldn't pay any more money for that class of work at that time, and we told him we could not do the work for that rate of pay, and the consequence was we got our time. There were at that time probably six women and four men in that department. All of the men quit. The change in wages decreased our wages about 40 cents per hour, or $3.20 on an eight hour day. The other men suffered a worse loss than I did.

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Cross-examination:

When I left the plant I was doing work myself that they have got four to six men and women on now, and they are not doing it.

Redirect examination:

My experience as a workman in the packing house enabled me to work at many different jobs. It is the practice of the superintendent to send such men as myself from one job to another, where a department got behind with its work. (Pp. 87-126).

WILLIAM LAWRENCE, being called as a witness for the complainants, testified as follows:

I live at Wichita, Kansas, and am business representative of the packing house workers. I have been engaged in that business one year. Prior to that time was hog butcher in the Cudahy Plants at Kansas City and Wichita. I have been in the packing house business 14 years and am familiar with the schedule of wages that obtains in St. Joseph, Kansas City, Topeka, and Wichita, with the exception of the Topeka schedule. The schedule in these various other plants is uniform with the exception of common labor. These wages were handed down by what is known as the Judge Alschuler administration, which set a minimum rate, but not a maximum rate. Judge Alschuler was appointed by the Mediation Commission. The Government and packers agreed to accept him as arbitrator to settle all grievances in wage controversies. At this point there was introduced in evidence the wage agreement which was agreed upon by the organization and the packers and sanctioned by Judge Alschuler, dated February 15, 1919. This same schedule was in effect
287 in 1920 with the exception that the workers had received increases amounting to 10½ cents an hour, and therefore you have to add 10½ cents an hour to these figures to get what they are being paid today (Pp. 126-146).

MILAN C. BOZIC, being called as a witness for the complainants, testified substantially as follows:

I live at Kansas City, Kansas, and have lived there since 1905. I worked in the packing house industry from 1905 to 1915 and from 1918 to 1919, and in 1919 was elected by the packing house employes as their representative and am now organizer for the union. My duties involve the adjustment of grievances between our members and employers. I am acquainted with laboring conditions in the packing house at Kansas City, and have a general idea of the size and capacity of the Wolff plant. I am familiar with several plants at Kansas City and St. Joseph which employ about the same or less number of men than the Wolff plant, who all pay the same wages as the big packing companies.

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E. W. JIMMERSON, being called as a witness for the complainants, testified substantially as follows:

I reside at East St. Louis, Illinois and am district president District No. 4 Amalgamated Meat Cutters and Butcher Workmen of North America, which is the union involved in this controversy with respondent in this case. The local union is in my district. I have charge of six states. They have the right to appeal to me in certain cases for assistance, and that is my connection with this case. I am acquainted with working conditions and wages paid in St. Joseph, Kansas City and Wichita. I am generally familiar with the manner of employment of workmen and the work they do in packing houses and the manner of conducting the industry. The smaller houses generally pay a little larger wage rate per hour than the larger houses do. The reason for that is the employes in the smaller houses are required to work on more than one job, and are all-around men, and have to be able to do more than one job. On December 1, 1919 Judge Alschuler awarded all skilled men employed in the butchering trades three cents an hour increase over what they were receiving at the time, and the mechanics in the mechanical trades were awarded a 12½ per cent increase of their hourly wages.

At this point counsel for the complainants asked permission to amend their complaint by adding the two propositions, first, 288 that the wage rate established shall be the same for male and female employes doing the same class of work; and second, that thirty days' continuous employment shall be accepted as prima facie proof of general competency, which amendment was permitted by the Court.

Cross-examination:

My duties as president of District No. 4 are to adjust grievances and put contracts into effect, take care of internal matters in our local organization throughout the district. Only the International Convention has power over me. We have an International executive board who must give authority for a local organization wishing to strike over controversies. If the local union desires to make a contract with the employer, we have no jurisdiction, with the exception of advising them whether they would be right or wrong. Before they would — allowed to put a contract into effect they would have to first get the consent of the International executive board. I have compared the wages in the contract of May 10, 1920 with the pamphlet presented here by Mr. Lawrence and Mr. Bozie and find that the wages asked in the new agreement are from 10 to 15 cents an hour less then are being paid in the other packing centers of America. I don't know whether that contract has met the approval of the Chicago counsel or the district president. The only reason I could give as to why the employes of the Wolff Packing Company are willing to accept so low a wage is that in my acquaintance with the men and women here they are trying to get along with the concern and agree with them on a solution of some kind of an agreement they

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may work out. I want to see the folks who have been working for this concern come to an agreement, and am satisfied to leave the question of the adequacy of wages to them.

"Q. You are not in a situation here, I hope, Mr. Jimmerson, trying to inculcate into these people that they should ask higher rates in order to make this controversy wider?

A. No, I don't think that is my position. I know it is not" (P. 224).

There have been no changes in the packing industry that would warrant the packing house worker working longer than 8 hours in the packing house industry of America, with the exception of profits for the employer. The difficulty in having a longer day for some employes than 8 hours is that "the employer company gets friction in his industry by paying one or two men or women whom he probably would think more of or treat better in some form and they would continue to work longer than 8 hours. The result would be turmoil there, the other employes wanting 8 hours *hour*. The rule used to be the packing house employes never enjoyed that before until the Alschuler administration. The packing house workers 20 years ago enjoyed it a short time in 1886, but the packing house worker has been enjoying a 10, 11 and 12 hour working day until the decision was made with reference to 8 hours. That was May 5, 1918 the 8 hour day went into effect, and I want to tell you and be frank with you and the employers you represent, that our organization will go down in defeat before we sacrifice one minute of that 8 hour working day" (Pp. 227-228).

Redirect examination:

Our organization leaves everything to the local union with reference to working conditions. We do not permit them to
289 strike without using every resort to settle the controversy before they strike. They have to have the approval of the National body in order that the strike would be legal, unless the strike was caused by the employer.

Judge Huggins: That would amount to a lock out?

A. Yes, some industries—I am speaking about the Wolff Packing Company could make things so miserable for the employes.

Judge Huggins: Some extraordinary thing?

A. Yes. (P. 250.) (P. 187-252.)

Joseph B. Sands, being called as a witness for the complainant, testified substantially as follows:

I live in Topeka and am an employe of the Charles Wolff Packing Company; this last time I have been there about 8 years. My work is that of watchman, and I have 21 currents to wind per hour, the smoking of the meat, cooking of the tanks of grease, and taking the temperature of the hogs. I work from about 6:30 p. m. until about 10 or 15 minutes of 6 in the morning, seven nights a week. I am paid $27.40 per week.

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Cross-examination:

About the first of the year there were three of us on at nights and they laid off one man, and my understanding was that if two of us did the work of three we were to receive more pay. That is my grievance—we do not receive it. I am doing more work than I did. I have the further grievance that the hours are too long and the job too strenuous for the pay I am getting. I have not called this to the attention of Mr. Wolff, but spoke to the day man.

Redirect examination:

I am a member of the union and knew the union was in negotiations, and that was the principal reason I did not interfere with it.

MAGGIE REYNOLDS, being called as a witness for the complainant, testified substantially as follows:

I live in Topeka and was employed by the Wolff Packing Company up to about the last of January. After the complaint was filed I was discharged. I was off sick and my daughter got hurt and I stayed at home and took care of her and told my daughter to tell the foreman I was sick and could not get back there. That was on Friday morning, and on Monday morning she was hurt as she was going to work, and she reported to her foreman that she could not work, and she did not work at all, and when I knew she was out of danger I went back Friday morning and my cards were out of the rack and I spoke to Mr. Sheehan, and he told me he had no use for me, he did not know whether I wanted to work or not and he had someone in my place; so I had no place to work and I went home. I was off sick the latter part of one week and the girl was hurt Monday and I had to stay home and take care of her. She reported to her foreman she was hurt, and I had already reported I would come back as soon as I was able to come back. (Pp. 266-272).

WYATT REESER, being called as a witness for the complainant, testified substantially as follows:

290 I live at 205 Klein and have been an employe of the Wolff Packing plant about 15 or 16 months, and was discharged between the 20th and 23rd of January. I was off about three weeks before I got discharged. My wife was sick and I asked Mr. Sheehan about it, and he says: "Whenever you are off for that occasion it will be all right." I also spoke to my foreman. He said the same thing. She got all right, and the baby, of course, something wrong with her eyes, and I had to see after her. I was off then. When I went back my cards were out of the racks. I said what they call meat piling. The timekeeper said when your card was taken out of the rack you are discharged (Pp. 273-275).

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MIRANDA REYNOLDS, being cal-ed as a witness for the complainants, testified substantially as follows:

I am 17 years old and have been working at the Wolff plant since some time in December. They sent for me. I was working some place else at that time and gave up my employment to go there. I stayed there until January 24th, the day I was hurt and mother went back Friday and the cards were out of the rack, and of course she went to Mr. Sheehan about it and he told her she had no work. I was hurt in an accident caused by a taxicab running into a buggy. I am not working now (Pp. 275-278).

D. WILSON, being called as a witness for the complainants, testified substantially as follows:

I have worked for the Wolff Packing Company about 8 years packing bacon. I am working 10 hours a day and have been since they cut the wages about the 17th of January. Before the cut, my wages were 47½ cents and now are 44 cents. In addition to the 47½ cents, I received the 5 cents an hour bonus. I could not take care of my family on my wages without outside help from the Provident Association, which is a charitable institution. They give us shoes, and such as that, for the children to wear to school (Pp. 278-285).

W. E. MAY, being recalled as a witness for further cross examination, testified substantially as follows:

In making this complaint Mr. Blair, Mr. Chase and myself are acting as a committee of all the employe-s of the Wolff Packing Company except the main office. We had a series of open meetings at our local, which we admitted all the employe-s to, and they voted up there to have this committee act for them (Pp. 287-289).

C. D. WRAY, being called as a witness for the complainants, testified substantially as follows:

I live in Topeka and have been employed by the Charles Wolff Packing Company up until January 13th this year. I was there when the negotations opened looking to the adoption of the new contract and remember about the clerical error occurring in the writing of that report. There was a mistake in the number of the schedule and it was retyped. The refusal of the company to adopt the contract occurred after the correction was made (Pp. 293-298).

C. O. NELSON, being called as a witness for the complainants, testified substantially as follows:

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I live in Topeka, and am a butcher, and have been employed by the Wolff Packing Company 22 years. My wages were reduced in December from 80 cents per hour to 60 cents, and they are now 57½ cents. I have been taken off my old job entirely, which was

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siding cattle, because some of the hides were cut. That is what they claimed. They laid it on me (Pp. 298-).

Cross-examination:

I was succeeded in my job by Mr. Ed. Swartz, who is not a member of the union. My complaint is against the money I am getting and the hours and the fact that I am not paid time and a half for overtime.

At this point a discussion arose concerning the question of the 8 hour day and time and a half for overtime, during which discussion counsel for the respondent stated:

"Mr. Hite: I think no intelligent man in this country ought to say a man ought to work more than eight hours. He has probably reached his maximum" (Pp. 328).

(Pp. 298-328).

ORLANDO CHASE, being called as a witness for the complainants, testified substantially as follows:

I am secretary of the local union, which includes packing house workers. This local only includes employe-s of the Wolff Packing Company. The other butchers have another local. I am one of the complainants in this complaint, and am acting representative of the union, and also as a committee for the employe-s of the Wolff Packing Company. I have had personal talks with the employe-s of the company at various different times (Pp. 329-336).

ALBERT H. MARTIN, being called as a witness for the complainants, testified substantially as follows:

I have lived in Topeka for more than two years, and have been employed at the Wolff Packing Company plant since the first of last May. I work in the tank room. In 1920 I received 47½ cents per hour, including a bonus, and worked 8 hours and received time and — half for overtime, but in 1921 the bonus has been cut off and on the first of January my wages were cut to 40 cents. The hours average about 9 a day. Some days I am required to work 12 hours.

Cross-examination:

My work requires skill and a certain amount of knowledge which takes some little time to acquire. It is not as hard as some forms of common labor. I have formerly worked as a carpenter and as a railroad employe-. I was consulted about the filing of the complaint here, and wanted it filed, because we want the 8 hour day restored, time and a half for overtime, and we want the bonus paid that was dus us—they refused to pay it, and that is one of our

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grievances, and also want the 8 hour day and the guarante
292 of 30 hours per week, and want our union recognized. W
wanted them to deal with our grievance committee. We als
want our wages restored to what they were in 1920.

Redirect examination:

The temperature of the room in which I work varies from 60 de
grees to 120 degrees. I provide my own clothes at my own expens
and pay my own laundry myself. I pay $2 apiece for aprons, whic
last probably three months, and $5.50 for rubber boots, which las
probably three or four months (Pp. 336-348).

ORLANDO CHASE, being recalled as a witness for the complai
ants, testified substantially as follows:

There were several meetings of the union held concerning th
matter, at which instructions were given and a committee appoint
to prosecute this suit.

Cross-examination:

I can not give the exact date on which the meeting was held a
which the committee was appointed. It was prior to the filing
this complaint, and was after the first of January. There wa
about 220 persons at that meeting. It was a public meeting an
there were people there that were not members of the union. Tha
was a motion made in the open meeting to bring this to the atte
tion of the Industrial Court. It was put to a standing vote an
passed unanimously. Mr. Black was recording secretary of th
meeting and Mr. May was chairman (P. 351-362).

WILEY SHAFER, called as a witness for complainants, testifi
substantially as follows:

I am one of the employe-s presenting the complaint, and am
member of the union, and have worked at the Wolff Packing Co
pany about 17 years. I work in the sweet pickle cellar. I was
ceiving 52½ cents, including the bonus, which was cut to 3
cents. In 1920 we worked 8 hours, but now we work about 9
or 10 hours.

Cross-examination:

My grievance is that they cut my wages and did not fix th
right with reference to other workers. Furthermore, I want th
hour day and time and a half for overtime, but I don't care ab
working overtime. Eight hours is enough for me (Pp. 362-37

KATHERINE MOROZZO, being called as a witness for the compl
ants, testified substantially as follows:

I work for the Wolff Packing Company and have worked th
since the 24th of June. My work is to run water in casings

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save pepsins. Before the change we worked 8 hours every day, and since then we work 9 or 10 hours a day. We work in a damp place and always have to have rubber boots on. There are two women doing that kind of work. We receive 30 cents an hour. Formerly we received the bonus, making our wage 35 cents an hour. 293 We have lost the bonus under the present system. We have to buy the rubber boots and overalls and rubber aprons at our own expense which last two to four months. The men working at the same work are no more efficient than we are, and they receive from 57 to 60 cents an hour. I attended the meeting of the union referred to (Pp. 376-380).

At this point counsel for the Wolff Packing Company made the following statement:

"Mr. Hite: Now, may it please Your Honors, you at least will recall that this complaint was amended asking that, where women were employed in the same class as men, they should receive the same wages.

"Judge Huggins: Yes.

"Mr. Hite: Now, I am authorized to say by the management of the respondent that wherever a woman is performing the work as efficiently as the men, that there will be no objection to paying them the same wages. The question of efficiency is all there is to it, and if that matter can be properly safeguarded, there is no reason why there should be any further inequality, if there is any, and I will prepare an answer to that part of the complaint, signifying the attitude of the management in that respect" (Pp. 380-381).

Mrs. Daisy Foster, called as a witness for the complainants, testified substantially as follows:

I am one of the employe-s -f the Wolff Packing Company and have been employed there since May last year. I run water in casings and save chittings. My wages are 27½ cents per hour. Under the old contract we also received a bonus of 5 cents an hour, which we don't get under the present management. We work from 9 to 10 hours now, but prior to January worked most of the time 8 hours and received overtime at the rate of time and a half when we worked over 8 hours.

Mrs. Susie Knisely, called as a witness for the complainants, testified substantially as follows:

I have worked for the Wolff Packing Company since the first of December, 1920. My duties are trimming sausage meat in the trimming room and the head room. I receive 27½ cents an hour. I was on piece work and they took me off. I made about 48 cents an hour on piece work. That was about the time those boys left the plant that they took me off the piece work, along some time in February. Some days I work 10 hours and some days I work 11 hours. I received overtime for all time over 8 hours until the no-

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tice was posted on the clock. Since then I have not received any overtime. The temperature of the trimming room is 48 degrees and in the head room it is awfully warm. I have to have special clothing for these two places. The effect of going from one of these rooms to another gives me the rheumatism.

294 E. L. BARRIER, being called as a witness for the complainants, testified substantially as follows:

I am a member of the State Board of Administration. The board has charge of the buying for the penal, charitable and educational institutions of the state of Kansas, and purchases between five and six million dollars' worth of goods for the various institutions every year, and the Wolff Packing Company has the contract for furnishing beef to three of these institutions at this time, and from my investigation I have found that live stock prices have declined faster than the prices of the finished products between June, 1920 and December, 1920 (Pp. 398-413).

H. W. SAWYER, being called as a witness for the complainants testified substantially as follows:

I am employed in the Wolff Packing plant as a butcher. I do mostly piece work. My wages have been decreased 40 cents off the carcass on bull and 25 cents off the carcass on a cow trimming. It makes about $12 a week difference. We had no 8 hour day under the previous contract, but since then our hours of labor have been 8, 9 and 9½ and 10 hours. I have received no overtime since the new arrangement went into effect.

W. E. MAY was recalled as a witness and presented a list of 1[illegible] names as parties who had authorized the bringing of the complaint (P. 448).

295 Mr. H. W. SAWYER, recalled as a witness, testified substantially as follows:

Some of the girls work in a room where the temperature is as low as 32 to 34 degrees. It is hard, it is as an endless chain and requires that the employes put forth their full physical strength. This employment is continuous for the hours he is employed, and no rest period is given except half an hour at noon. I leave a room of 32 to 30 degrees and go into a room where it is 125 to 130 degrees hot. About 12 out of the killing gang do the same. Around the scalding tub the temperature is about 125 to 130 degrees in the summer and in the winter is about 34, it is all in steam, you can hardly see your hand before you. In the smoke house the temperature is about [illegible]. About 15 of the workers in the killing gang go from these hot to cold rooms, and all of the members of the cutting gang, most of the trimmers and beef boners, and about 8 of the men who work in the tank room. Altogether about 25 per cent of the employes have to change from rooms of high temperature to those of low temperature.

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There is considerable risk of accidents from sharp weapons and the machinery down there, which is not guarded like it ought to be.

"Mr. Hite: Your Honor, please, I suppose that is a matter of common understanding. Everybody has some risk everywhere.
"Mr. Jackson: If they work near the machinery itself.
"Mr. Hite: That is what you asked him, those that work near the machinery, do they have any risk?
"A. Yes.
"Mr. Hite: Well, I think that is perfectly obvious.
"Mr. Jackson: Well, you concede there is risk, then?
"Mr. Hite: Why, of course I do."

I have been attacked by rheumatism and believe it was on account of the rooms which I work in. We all know it is not good for our health, but we have to take it and do the best we can. There are no physicians or relief nurses kept at the plant. I belong to the union and attend the meetings, and those meetings are largely attended, and mingle with the other employes and converse with them. We once had a relief association down there among our employes, and we always had somebody on the sick list. I have worked on a farm and it is not as hard work as you do at the packing plant. Down at the Wolff plant you have got to do your work. Nobody will do it. On a farm you can maybe rest a little bit now and then. The hours are longer, but you can rest a little bit. What I am complaining of, they took the 8 hour day away from me, and I should have my fresh air. I am penned up, and that is enough for foul air (Pp. 488-503).

236 CHARLES WOLFF, JR., a witness called on behalf of the respondent, testified substantially as follows:

I am president and general manager of the Charles Wolff Packing Company, and have been such since 1913, and preceding that time I was vice president and treasurer for a number of years. My father, Charles Wolff, Sr., was president before my term in that office. The Charles Wolff Packing Company began business in 1866 and was incorporated within a short length of time following that date. My father, Charles Wolff, Sr., was the founder of the business, and the plant was continuously under his management from that time until his death, but for five or six years prior to December 31, 1913, he did not devote much of his time to the plant, and in 1913 the entire year was spent in California.

It was a very small plant to begin with and gradually developed to its present size. We kill on the average of about 200 cattle a week and from 3,000 to 4,500 hogs per week. The plant covers about two city blocks and is modern in every respect. The sales run from $3,000,000 to $7,000,000 per year. The system of government inspectors is in force in this plant, there being seven or eight inspectors at the plant all the time, it is in operation, whose duties are to inspect the products and see that they are fit for human consumption.

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The workmen and employes of the plant are subject to the rules and regulations sent out from the head of the Bureau of Animal Industry at Washington, D. C. The paid in capital stock of the company is $600,000. The company has not made a profit sufficient to clear dividends in 1920, but on the contrary sustained a loss of approximately $100,000. This is also true of the year 1919.

"Q. Well, Mr. Wolff, has the company ever had any controversy of any kind or character with its employes prior to this matter in this Court?

"A. This matter right now?

"Q. Yes sir.

"A. The only other time we had any difficulty was in 1918" (Page 513).

I refer to the matter of the strike in 1918. The employes of the packing plant went on a strike in 1918 for approximately six weeks. We were able to continue operation to a certain extent. Of course it affected the operation we were not able to continue full capacity. The matters in controversy that brought about that strike were certain unreasonable demands of terms and working conditions and rates of pay. The company did not accede to those demands, and the majority of the men never returned. The majority of the employes of the Charles Wolff Packing Company live here in this city and the majority of them have been in the employ of the company over five years. This strike of 1918 was the first occurrence in the ment fixing a scale of wages. After this strike we had a contract with the employes fixing the scale of wages, then we had another contract in 1919 to be in force for a period of one year, but this contract was abrogated. In May, 1920, another contract was made.

Clause 10 in contract of May 10, 1920 was known as the
297 bonus clause. The committee of the union who presented the contract was Hunter Blair, W. E. Briggs, J. T. Goodell and H. Lathenburg.

(Mr. Wolff at this point testified in detail as to the wages requested by the union in its contract submitted in January, 1921, and the wages put in effect by the company on January 17, 1921. This evidence is not abstracted in detail at this point because the same matters are clearly shown in a schedule admitted in evidence before the Commissioner and otherwise included in this abstract.)

The wages paid to the employes in the plant are about 79 per cent of the total payroll of the plant. By a total payrool I mean the office, salesmen and plant. There was a great lot of money made by some of the large packers during the progress of the war, which was due to the fact that the export business during the war was profitable as compared with the domestic business, but the smaller packers could not do any export business, due to the ruling by the United States Food Administration.

"Q. Mr. Wolff, state what the general condition of the packing way of labor troubles. Prior to 1918 we had no contract or agreement house business is all over the country with reference to the certainty or uncertainty of the market conditions.

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"A. The packing house industry generally is in a very precarious condition, due to, as we all know, the abnormal conditions obtaining.

"Q. Is there any reasonable prospect, Mr. Wolff, from your observation of the business of this company, that it will be able to make any considerable profit this year?

"A. Will you please put that question again?

"Q. From your knowledge of conditions in the packing house business generally is there any reasonable certainty of making a profit this year in the packing house business in Topeka?

"A. On the contrary the future is quite uncertain.

"Q. Now I will ask you, Mr. Wolff, the general question if, from your knowledge of the condition of the Charles Wolff Packing Company and the conditions of the business generally, whether you can continue to operate your plant and continue to sustain the losses you have in the last two or three years?

"A. Absolutely not.

"Q. And what will be the effect of the continuance of present business conditions on the operation of the plant?

"A. If they continue?

"Q. Yes.

"A. They could not continue; we would have to shut down the plant" (Pp. 551-552).

We were compelled to reduce the wages on account of the abnormal conditions. The condition of the business of the company would not justify our continuance, with the clause in the contract reading: "Basic day work shall be eight hours." On account of the condition of the packing house, as I know it, we would not be justified in entering into any contract at all at this time.

"Mr. Hite: There is a matter I wish to ask Mr. Jackson about. Mr. Jackson, I wish to ask whether complainants are in a situation to admit that the Big Five Packers, so-called, have posted a bulletin reducing the wages approximately 12½ per cent and abrogating the eight hour rule. I ask you with reference to that for the reason that it will avoid the necessity of incurring some expense to bring somebody here to testify to the fact.

"Mr. Jackson: I don't know anything about it except what I have seen in the papers.

"Mr. Hite: Of course you do not. Can not admit it then.

"Mr. Jackson: We can communicate with Mr. Jimmerson.

"Judge Huggins: I think before night Mr. Jimmerson will have some notice of that fact, because I have just talked with a man who called me up from Wichita and said that in the Cudahy plant down there, this reduction had taken place, and the men were very much agitated and there was danger of a strike, and I suggested to this man who was wanting me to get word to these Cudahy employes, Mr. Jimmerson was attending this trial and that they immediately get in communication with him; so I am inclined to think before night you folks will have information upon which you will possibly be able to——

"Mr. Joyce: We can send to the Butcher Workmen's Building—

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we have our own building in Omaha—we can get in communication with them today. Mr. Jimmerson is there. He handles the proposition for this district.

"Judge Huggins: Well, has he gone to Omaha?

"Mr. Joyce: Yes.

"Judge Huggins: Well, I was mistaken when I told this man he could get in touch with him, but Mr. Joyce, you will talk to these Wichita people if they call, won't you?

"Mr. Joyce: Yes.

"Mr. Hite: I have a telephone call from Chicago advising me that a copy of the bulletin is in the mail to me.

"Mr. Jackson: When you get it you may introduce it.

"Mr. Hite: I did not want to go to the expense if the matter is of general information" (Pp. 557-558).

(The Mr. Joyce referred to in the above discussion is one of the district officers of the Amalgamated Meat Cutters and Butcher Workmen of North America.)

CHARLES WOLFF, JR., recalled; testified substantially as follows:

The schedule of rates set out in the contract of May 10, 1920 is a schedule of rates lower than the rates following the ruling made by Judge Alschuler with reference to the Big Five Packers at Kansas City. The fiscal year of the Charles Wolff Packing Company terminates the last of October each year. Up to and including the year 1918 our year ended with the calendar year December 31. For the six months' period beginning October 30, 1919 and ending April 30, 1920 the business showed a very marginal profit, but for the year ending October 30, 1920 there was a deficit or loss of over $100,000. The gain made in the first six months was not only overcome, but a large deficit incurred, and the net result for the year 1920 showed over $100,000 loss. When we buy cattle it is necessary that they be killed within two or three days following their receipt, and this is also true of hogs, and it is very important that all the products be given immediate and careful attention, otherwise they will not keep.

After the pork is put in to cure it takes around 60 days to be fully cured, and after they are cured they are soaked and then smoked, and after they are smoked they should be disposed of promptly—it is preferable that they be disposed of the second or third day after they are removed from the smoke house, but at any rate they should not remain in stock a greater length of time than a week.

299 These products are sold on an open competitive market and it is necessary to meet competitive prices in order to dispose of the products promptly. You can not store the products indefinitely. Some products can be placed in a freezer and held for a considerable length of time, but that is not good business. We must market promptly in order to avoid deterioration. When the cured meats are fully cured they deteriorate after that time. Fresh beef should not be held in a refrigerated room longer than seven days. After that is is not as marketable. Smoked bacon as well as

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cured products begin to deteriorate to a small degree after the time they are fully cured, and if they are held too long they show additional strength and discoloration.

I had a conversation with a number of persons representing the complainants about January 13, 1921 with reference to the proposed contract. The notice of January 13th was handed to me by Mr. May and Mr. Kendall and I had a conversation with them at that time. I suggested to them that Mr. D. R. Hite was acting in the capacity of counsel for our company and I would be very glad indeed to arrange for a conference to discuss this matter. They declined to arrange for any meeting with Mr. Hite. It is the best of my recollection that they also called on me with reference to the matter of the contract of May 10, 1920 at that time. Mr. L. L. Patterson was superintendent at that time and I had numerous conferences with him in regard to the matter. The executive officer of the company who has charge of the matter of wages to be paid is Mr. Sheehan, but the wages are subject to my approval.

Cross-examination:

A change was made in October 1919 in the ownship of the stock of the company. About 90 per cent of the stock was sold to the Allied Packers, Inc., which owns plants at Boston, Mass.; Wheeling, W. Va.; Macon, Ga.; Richmond, Va.; Detroit, Mich.; and Buffalo, N. Y., and several points in Kansas. The other 10 per cent is on the stock outstanding. I owned a considerable amount of the stock which has been negotiated for municipal bonds. The following are members of the board of directors: Mr. J. A. Hawkinson, Chicago; Mr. A. S. Arthur, Chicago; Mr. Frank R. Warton, Chicago; Mr. Lyman Craig, Detroit. The capital stock of the company is $600,000. The parent company has a bond issue, but the Charles Wolff Packing Company has no bonded indebtedness except in so far as the bonded indebtedness of the parent company would affect this plant by reason of the fact that the stock is owned by the parent company. There is no interest charge made by the parent company by reason of the fact that the company has to borrow money to carry on its business, and as I understand it, that interest charge is prorated according to the requirements of the different plants. For instance, we pay interest on the bonds which we require to buy live stock supplies, also to cover labor and all necessary operations pertaining to the packing house business. We obtain our current requirements by remittances from the central office, also by placing paper, of course, with the local banks.

"Mr. Hite: Does Your Honor understand the purpose of this examination? I do not. I would like to be advised about it. I don't want to stop it if it is going to get anywhere but I don't understand it.

"Judge Huggins: Of course, Mr. Hite, Mr. Wolff has testified to a loss of the Charles Wolff Packing plant. Now, cross examination on the matter or a matter of that kind should be allowed a rather wide range. He has testified from—I assume from the books

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of this local company, he has very kindly and properly said
300 the books are open to our accountants and if it is found
necessary we will put an accountant onto these books but I
can see that Mr. Jackson in his cross examination may have in mind
that he may develop the manner in which this business is done and
may develop some facts which may be relevant to the question as
to whether this is a loss that has resulted solely from the operations
of this local plant or whether under the arrangement by which
this plant really seems to be a part of a system of similar plants over
the country, that this plant might be charged up with more than its
share of the loss. I don't know what is in his mind.

"Mr. Hite: Well, suppose that was true, that is the acid test of
cross examination and its materiality. Suppose the question was
answered the way counsel wants it, what is the answer? Suppose
it is shown that this corporation is burdened with loss due to its
stockholders handling the business in other places, what has that to
do with this question?

"Judge Huggins: Well, it has a good deal to do with it, Mr. Hite,
because under the Kansas law we are commanded by the Legislature
to, insofar as it is possible to do so, to—I will say that we are com-
manded by the Legislature to consider in all such matters as this
before us the return to capital as well as a fair wage to labor.

"Mr. Hite: I understand that perfectly well.

"Judge Huggins: All right. Now, that is pertinent, it seems to
me, if, as a matter of fact, a legitimate, proper and unavoidable
loss under good management has occurred by reason of the local
business, the business actually transacted by this plant, that would
affect the question of a fair wage to that extent. If, as a matter of
fact, the loss which has been charged to this plant was caused, we
will say, partially by losses which were incurred in other plants in
the country, even though they might be part of this allied company
properties, I don't think that these workers here should have it held
against them in a wage matter of this kind to make up for a loss
that occurred in Georgia, for instance.

"Mr. Hite: If that is the ruling of the Court, this examination is
certainly material, but I would like to be unmistakably informed
that that is the ruling of the Court because I submit to Your Honor
with great respect it would be an extraordinary and erroneous ruling
and you can apply a very simple test to it and that is here is another
plant in Detroit, if I understand correctly, if the Detroit plant loses
money and charges a portion of it up to the Kansas plant, that has
got to be rejected in considering whether the Kansas plant can pay
these wages but how about Detroit? Is the Detroit laboring man to
stand the whole of that loss? Your Honor will readily see any such
working of this act would subject it to constitutional criticism that
would probably tear it all to pieces. Here is an owner of a property
that happens to be in the state of Kansas. He is a citizen of the
United States. He has a perfect right to an equal protection of the
laws and am I to understand that in such circumstances that his
property in Kansas is not to be permitted to bear its just and fair
proportion of the burden that the owner has to stand somewhere and

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f the same rule is applied elsewhere, it is entirely clear that in the illustrated case I have given that the courts of Michigan 01 if it has a court like this, would instantly reduce wages of those employees for the very reason that Your Honor refuses reduce them here.

"Judge Huggins: Not necessarily. A business such as this, this olff Packing Company or any other business, what we call the sential industries under the Kansas Law might be or might be- me a parasitical industry and an industry that could not be erated to pay a fair wage, in which case it would not be right to rden the business in Detroit with a loss that is incurred here. Of urse, this is only one of the elements that enters into this case.

"Mr. Hite: Your Honor, I will bring this thing to a point. I w admit for the purpose of testing this, that the plant operated by e Allied Packers in Macon, Georgia lost a large amount of money, sproportionate to the loss sustained, and this plant, its revenue was lled upon to contribute a ratable proportion of that loss and with at admission now in the record, I ask the Court now to rule as to hether that fact is to have a material bearing upon the wages in ansas because I wish the record now to show this respondent objects that on the ground that it denies him equal protection of the laws violation of the 14th amendment to the Constitution of the United ates so there will be question about testing the constitutionality of is Act.

"Mr. Jackson: I suppose the Court will decide the case when it ts to it.

"Judge Huggins: I am afraid to rule on that right now.

"Mr. Jackson: We have a right to conduct this examination in ch a way so the Court would undertsand what has been charged to e plant. It is altogether possible, through error or even through tention, I am not charging that at all, of course, but the Court can adily see where the plant is run by 5 or 6 different establishments at losses might be charged to this plant which would not be real at l, even at that place.

"Mr. Hite: I made an admission that that is a fact.

"Judge Huggins: My ruling, gentlemen, is this: That this is a oper subject for cross examination of this witness for the purpose developing the real facts in regard to the operation of this plant cated in Topeka, Kansas, that the question as to whether it was ght and proper that this local plant should be required to make losses of every plant belonging to the same concern is a matter hich can only be determined after all the evidence is before the urt, but I will say further that I am making this ruling with the ea in my mind that the largest matter of concern here is the eration of this local plant, this plant here in which these people are rking and that the main concern is to find out whether, under an onomic and efficient management, this plant can afford or can- t afford to pay a fair wage and to grant healthful surroundings and oper working conditions to its employees and that in determining at question, the management and operation and results of the eration of the local plants are at least of paramount importance.

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Whatever influence the loss sustains by the allied packers at the other plants may have will be a matter of secondary consideration, at least.

"Mr. Hite: To this ruling of the Court the respondent objects and claims that under such ruling it will be denied the equal protection of the laws and that it will be deprived of its property without due process of law in violation of the privileges and immunities granted to this corporation under the constitution of the United States and claims such privileges and immunities at this point.

302 "Judge Huggins: Well, the objection is overruled. The cross examination may proceed for the reason stated by the Court previous to this". (Pp. 575-580).

CHARLES WOLFF, Jr., continued: We pay out proportionate share of all interest charges. The annual interest charge on the bond issue of the Allied Packers is apportioned to the various plants as well as the interest charges covering our current requirem-*ents*. One is charge on the proportionate bond interest and the other interest charge covers our current requirements that may be—part of which is local and part furnished from the Chicago office. All I can tell you about the bond interest of the Allied Packers is that it is based proportionately, but otherwise I do not know what the basis is. That is the best answer I can make to that question. An accountant going over the books of the company will find the interest charge but I do not know whether he will find anything about the way it is arrived at. This item was included in the operating expenses and contributes to the loss I have sworn to. I can not quote the amount of this interest from memory.

There is quite a variation in the working capital required to operate the plant according to business conditions in the different seasons. It would amount from approximately $400,000 to over $1,000,000. I would say the capital stock of $600,000 represents fairly the value of the plant and equipment exclusive of the inventory.

The new management came in control of the property during October 1919 rather than in 1913. There was no particular change in the stock ownership of the company or its policy from the time I became president in 1913 until 1919.

Prior to its absorption by the Allied Packers the Charles Wolff Packing Company did not have any bonded indebtedness. The interest charge that went into the operating expenses prior to October 1919 was based wholly on our requirements for working capital. Our interest charge now represents our requirements of funds to carry on the business. There is a certain annual charge resulting from the bond issue of the Allied Packers, which is proportionately charged to the various plant according to the size and valuation of the plant. I do not know whether the capitalization of each plant is taken as its valuation, or if there is an actual valuation made of the property. Between the time I became president and the absorption of the plant by the Allied Packers we made a profit some of the years, and some of the years we did not. We made a profit beginning

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913, 1914, 1915, 1916 and the first half of 1917. The net result for
he year of 1917 was a loss and 1918, 1919 and 1920 showed a loss.
The packing industry was profitable in Topeka up to the war period,
nd has not been profitable during the war period, except between
ctober 1919 and May 1920. We are now on about pre-war prices or
little below them, as to live stock. That applies to both cattle and
ogs. Our wage scale now is hight than in February, 1917.
ractically the only change in the capacity or output of the plant
ithin the last five or six years was the installation of a hog cooler
uring 1920 of 750 hogs capacity. Following the installation of
he new hog cooler there was quite an increase in the number of hogs
s well as cattle killed. Whenever we have not sufficient capacity
n our plant it is a very easy matter to provide additional capacity by
renting outside storage.

03 Our production and sale for the year 1920 shows an increased volume over preceding years, and if we have made a
ss in 1920 it is not due to lack of production, and it has not been
ue to having to sell at a less price. The peak of prices of our
roducts was reached in May 1920. Our competition in sales is
ith the five big packers and other packers at the Missouri River
oints, including Wichita, Fort Worth and Denver, and our sales
re representative of the general prices of beef in that territory at
ny particular time. Our price is in line with our competitors.
e do not dispose of our products through the west and southwest;
e have to ship some of it east, and we export some, and products
o east usually at a less price. We enjoy the same freight rates that
ansas City does through the west and southwest maybe a little less.
e can realize more from our products through disposing of them
rough the west and southwest, against shipping it east. We have
ot exported enough to make any difference in the gross returns.
e have not sold enough in the eastern outlets to make any substantial reductions in the gross receipts in what they would have
een had we found a market for it in the southwest and west. Meats
re higher now in 1920 than they were in 1913 and 1914 when we
owed a gain.

"Q. Can you give us any reason why the packing business should
e less profitable now than it was in 1913, 1914, 1916, and 1917,
nsidering the conditions I have mentioned, or any others that you
y know of?

"A. Well, yes. One reason is the high labor cost and the inficiency of labor, and another is the unfavorable market conditions.

"Q. Well, the market conditions are much more favorable than
ey were in any of those years, were they not?

"A. 1920?

"Q. Yes, 1920 and 1921, the market conditions, so far as your
oduct is concerned, have been much more favorable than they
re at any time up to 1917?

"A. Well, no, they were not during the war period. What I say,
favorable period, I mean that the hogs and cattle do not cut out
advantage at times.

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"Q. Do not what?

"A. Cut out to advantage

"Q. What is the matter? Are they growing a different kind hogs now?

"A. No, that is due to the fact that your receipts for the finish product will be less than the total cost plus all operating expens (P. 623).

Another thing I overlooked was that the export business has qu an effect on the packing house business. The export business h been less, in my recollection, than previous years.

"Q. You have had no trouble in disposing of your products, ha you?

"A. Well, the market has been bad at times, reduction in t accumulation of stock. When the market is bad, of course it d not move well, and you simply have to hold your stock" (P. 624

During the year ending October 30, 1920 we sold more pounds meat than in any other year in the history of the company (P 507-631).

304 Mr. Wolff further testified:

"Mr. Hite: If Your Honor please, we have downstairs the vault of the Supreme Court room the payrolls and they stack this high and about that big. Now, in order to get this informati in that way, except by exclusion, as we got it, we will have to t those payrolls and have them put on the adding machine one one weekly and summarize and get that total. Now, we got it up excluding the office force and salesmen, the whole amount of i pay roll, and we found it was approximately $400,000 for last ye If you want it exactly that is what we will have to do, is to get it of these pay rolls.

Judge Huggins: That is near enough, isn't it?

Mr. Jackson: Yes, that will do for the last year.

Mr. Hite: Now, as to the previous years, we can deal with t totals from our statistical books but we cannot deal with it for mo by month or anything of that sort.

Mr. Jackson: We have not asked for it month by month.

Judge Huggins: You can give us the hourly wage.

Mr. Hite: Yes. No trouble about that.

The Witness: That is going to be a most difficult thing to g It will require considerable time.

Mr. Jackson: I cannot see that this has much to do with They may have varied during the year. It will vary according his testimony yesterday as to where the workmen were pla They may have worked in one classification only part of the ti

Judge Huggins: If they did furnish a classification of wages, I understand it, for these various jobs, not for the individuals t work in them, for one individual might work in several jobs his wages might be the highest wage paid in one job. I would to have something that would give me, in a general way, the varia in the wage scale between those periods and the present.

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The Witness: In other words, you would like to have the total payroll in dollars for 1916 and 1917?

Judge Huggins: Yes.

The Witness: Also would like to have the——

Judge Huggins: That is approximately the same as you got the total for last year.

The Witness: Yes. Also the average wage per hour?

Judge Huggins: Not the average wage, the fixed wage, the wage scale for the various jobs.

The Witness: Well, all right. I copied those.

Judge Huggins: Not the wage scale for the various individuals but the jobs.

Mr. Hite: That will be a fearful job, Your Honor.

The Witness: It will.

Mr. Hite: Because it varied from time to time. The testimony here is that up to 1919 we never did have any contract with our employes so what we would have to do would be dig up the old records and get each day's pay rolls and find what each man got. Now, we can give you an average by taking the number of occupations and dividing it to the pay rolls" (Tr. pp. 595-6-7).

M. T. Robinson, a witness called by the respondent, testified substantially as follows:

I live in Kansas City, Kansas and am timekeeper and employment man for Swift & Company, and have been timekeeper for 2½ years, and took on the employment work about 8 months ago. It is part of my duty to look after the rates paid to employes. There was a notice given to the employes of Swift & Company of a proposed reduction in wages of March 8, 1921. That notice was printed. (A copy of this notice was produced by the witness and introduced in evidence).

There are approximately 2,000 men employed in the plant at Kansas City, Kansas at this time. Swift & Company operates other plants at Chicago, Omaha, St. Joseph, Fort Worth and Denver. The witness at this point testified in detail as to wages being paid and the proposed reductions).

On the proposed schedule Swift & Company is changing the overtime rate, not to take effect until after ten hours, or 54 hours a week. After 10 hours they had time and a half for overtime with double time on Sundays and holidays.

Cross-examination:

I am not familiar with the operating of the plant. That is the foreman's duty. I have been reading from the schedule of rates. They may put a man there temporarily at relief work at higher rates. The schedule I have read from are the Alschuler rates (Pp. 638-640).

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JOHN SCHALKER, JR., a witness called on behalf of the respondents, testified substantially as follows:

I have lived at Leavenworth, Kansas and am president and general manager of the Schalker Co., and have been in that occupation 11 years. The Schalker Co., owns a plant, which is located at Leavenworth, and employs 60 men. Our men work 10 hours a day, with no extra pay for overtime. (Mr. Schalker testified in detail as to the wages paid different classes of employes). My company has reduced wages in the last six or eight months and the present wage is the reduced wage.

Cross-examination:

I cannot keep out of town labor. My employes are not as skilled as those in the larger plants. I would not expect them to do as much work as in the Swift plant without the equipment they have there. We don't have any of the more efficient men, because they would not work in our kind of a plant. Labor in the big packing plants is more highly specialized and the big packers get all the best help, because the laborers won't go to a small town packing house.

306 Redirect examination:

When wages were reduced last fall the reduction was about [illegible] cents an hour.

"Q. What is, generally speaking, the character of men that go from the big centers and go to the smaller packings houses?

"A. Those that come to our place would work for three days a week, fellows the union would not let belong to it— blackballed, thrown out——" (P. 656).

We would prefer to pay higher wages for higher class work.

Recross-examination:

During the war we tried to get men at any price at times, but could not get them. That is the only time we have offered to pay the union scale for labor. (Pp. 640-659).

CHARLES WOLFF, JR., recalled:

There has been no reduction in wages of office employes, but considerable saving has been effected by increasing the work. There may have been some increase in expenses in the office at the time of the change in ownership. I believe the foremen remain about the same. We have a general superintendent who visits me at different times.

"Q. Well, has the overhead been increased by one of these employes I have suggested in these questions, any considerable amount in the last year or two over what it was prior to that time?

"A. Well, of necessity there would be some increase in overhead (Pp. 665-666).

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I could not state the amount offhand. It would probably be as much as $5,000. I don't know whether it would be $20,000 or not. That would be since the change in October, 1919. The idea of reducing the wages originated with the local management. The ideas of the parent company coincided with ours. The matter of adjusting the wage scale was left to our judgment (Pp. 659-675).

CHARLES WOLFF, JR., recalled:

According to the appraisal by the American Appraisal Company the value of the plant is around $1,000,000. The personnel of the local management since October 1919 has remained practically the same. I am in charge of the local management.

At the time the proposed contract, dated January 1, 1921, was handed to us and of December 29th, Mr. Sheehan brought the contract up to me in my office and we reviewed the same very carefully. At this conference Mr. Sheehan suggested that the rates be adjusted so they would be fair to the employes as well as the company, so we adjusted the rates. I had not previously taken up this question with the Chicago office. We received advice from them that the matter was in our hands, to use our own judgment in the adjustment of rates.

"Q. Well, Mr. Wolff, while we are on the subject, and for purposes of immediate comparison, I will ask you to state what is the percentage of reduction in the wages of the plant employes under the rate fixed as of January 17, 1921.

"A. Compared to the rates of May 10th?

"Q. Compared with the rates previously in force, yes. That is, the rates of May 10, 1920.

"A. The per cent reduction amounts to 10.25 per cent" (P. 719).

That includes the bonus of 5 cents an hour; the bonus was taken into consideration as part of the old wage. The average hourly rate requested January 1, 1921 amounts to 49.44 per hour, and by adding the bonus of 4 cents, leaves a figure result of 53.44 cents per hour. The average for the contract of 1920, plus the bonus, was 53.55 cents. In 1920 we had an 8 hour basic day.

The rates of pay for sales men are practically the same as they have been for over a year. There has been no reduction in the pay of all.

"Q. Now, Mr. Wolff, state to the Court what your best judgment was as to the future conditions as to stability of market, anything that can be depended upon in the near future.

"A. That the conditions are very abnormal." (P. 726).

"I think it is generally conceded amongst authorities, men who generally know, that the present conditions, particularly as applied to the packing house business, are very peculiar. The market conditions are not at all normal. As to the future, the future conditions are very uncertain. We have a very fluctuating market, the export business has fallen off greatly, and it is very abnormal, when

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that condition ob-ains we all know that it affects the domestic mark and market conditions very materially. On account of the prese or prevailing rates of exchange, it makes the various commoditi very high for foreign countries. Summing up, I would say th the future conditions are very, very uncertain. We can not te what we might encounter in the future" (Pp. 727-728).

CHARLES WOLFF, JR., recalled:

"Q. Mr. Wolff, I do not quite under this interest proposit yet, I think, since your last statement. I thought I did until y supplemented your former statement today. Do I understand th you obtain and use money from the parent company without pa ing interest on it?

"A. No sir.

"Q. For your working capital, I mean?

"A. We are charged with interest on all money that they furni us of course.

"Q. But you do pay in addition to that a regular bond inter That is, your proportion of the bond interest of the parent compan do you not?

"A. Yes, we pay a proportion of the bond interest" (pp. 738-739

From the money we borrow from the parent company we pa the current rate of interest that we pay locally. The parent co pany owns 90 per cent of the $600,000 capital stock. I consi the stock worth more than par. If there is any difference betwe that and the value of the plant it appears in the surplus. We ma monthly statements to the parent company, and in additi
308 make income tax and other reports to the government.

It is possible that higher rates were paid during 1920 th those fixed in the contract. I think the contract signed was n varied enough to make any substantial difference in the figures. T decrease in wages amounts to 10¼ per cent which is approximate $12,000 which amounts to just 7 per cent on the capital stock (p 750).

C. W. SHEEHAN, called as a witness on behalf of the respondent testified substantially as follows:

I live in Topeka and am production superintendent of the W Packing Company; have occupied that position since May 10, l year. I was formerly traveling supervisor of various plants of t Allied Packers. Since I have been at the plant I have had occasi to meet grievance committees from the local union, and I believe have had every grievance that the grievance committee brought m There have been a number of them. I would not undertake to t them all, but I will go back to the early history of the contra Upon my arrival in Topeka, which was May 10th, the contract h been drawn up, a schedule of wages compiled, and as far as I co understand, it was understood and agreed upon by both the form superintendent, Mr. Patterson, and the members of the local uni for the employes. On either May 10 or 11 Mr. Patterson and mys

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went into conference with the union committee. We, as intelligently as possible, went over the entire matter and were all satisfied that it was perfectly understood by Mr. Patterson and myself and the employes.

In the first pay day affecting this—that this new rate affected, which happened on a Saturday, there was very much dissatisfaction displayed by the employes on leaving that afternoon upon receiving their checks. The timekeeper's office is in connection with mine, where the employes receive their pay checks, and as it happened I was in my office as they were going out. I heard an awful lot of dissatisfaction and grumbling and discontent, and I really could not understand it. This was proven, or their dissatisfaction was proven, by the fact that on Monday morning after the whistle had blown the time to start to work, there was a number of employes gathered outside of my office and refused to begin work, and after a delay of possibly thirty minutes Mr. Blair instructed them to go back to work and he would take care of their claims, and I devoted the biggest part of that day doing nothing but going over this contract with Mr. Blair, with the idea of getting a better understanding of it, getting a better adjustment of rates, and he thought the matter was well understood. As a matter of fact, It apparently was not understood, for there was a great many employes of the plant who did not understand it, and I was continually bothered for perhaps a week by the individuals coming to me complaining about the amounts they were receiving. This sort of complaint became an annoyance, and I simply had to sit down and refuse to listen to any complaints, and instructed the men when they came in with such a complaint to take it up with the grievance committee. After that I did not have much trouble along those lines. There were several cases that the grievance committee had come to me regarding the adjustment of rates. There was one in particular where the president of the union had called my attention to the fact that unless I made a reduction or discharged a certain employe he would have a strike. Mr. Sawyer was present at that time. He said, "If you don't reduce some man's wages they are going to strike." I presented my side of it to Mr. Sawyer in this respect, and a week or ten days later he came to me the second time and told me unless some 909 action was taken I could not expect anything but a strike. I asked him what was the real reason for it. I asked him if the other men doing the same class of work were getting the wages as they had requested. He told me they had. "Well, then," I says, "what is the use of your complaining to me about another individual that I am satisfied to pay a little more?" "Well, the other employes are kicking, and you have got to do somethi-g."

Well, I thought of the matter a great deal and promised Mr. Sawyer on the second trip that I would take some action on it. On a Saturday I instructed the foreman who was in charge of the department in which this man was working to notify this man Monday morning he would receive a reduction in wages, and did, but it was *not* only a few minutes after until the grievance committee, composed of Mr. Sawyer, Mr. May and Mr. Swartz, who is

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the man they asked me to reduce, called upon me and protested my action. I could not understand why they should protest, inasmuch as I was complying with their request, and after their making their complaint known I told Mr. Swartz his work had been satisfactory to me and I was not responsible for a reduction of his wages, and told him just exactly how it happened. The result was Mr. Sawyer and Mr. Swartz got into a little argument of their own, and I compromised by saying that for the time being I would not reduce Mr. Swartz' wages, but I advised him to go back to work and when they found out what they wanted to come back to me and we would get together again. I never heard anything more about the matter.

"Mr. Jackson: Does that throw very much light upon this controversy?

"Judge Huggins: Well, it shows how they handle things down there, a little bit.

"Mr. Hite: I think it throws a flood of light upon it, myself. The idea of their endeavoring to tell this man they were going to strike if he did not cut somebody's wages" (P. 772).

In the case of Mike Oswell, he was discharged for insubordination, and after his discharge the union committee instructed him to stay on the job and he would be reinstated, and there was a conference held on that and we arbitrated by putting Mr. Oswell back to work. All these things occurred under this 1920 contract. Mr. Oswell was required to make some apology for his conduct. He admitted he was wrong in his actions, and it was on that ground we promised to reinstate him. I haven't any personal grievance or antagonism toward any employe down there.

With reference to Mr. May's testimony I want to make this statement, that I have at all times endeavored to meet Mr. May just as courtesously as a man could meet a man, both before and after his position he now holds with the union.

The committee of the union brought the proposed contract to me about December 29th. They just handed me the contract and it was understood I would take it under consideration. Possibly the next day, or within the near future, I recalled Mr. May and Mr. Kendall with reference to one word that was written in pencil at the top of the contract, and they explained to me what they meant by it, and the next day I studied the contract a little closer, took it up in a hurried way, went over it with Mr. Wolff, and we did not study the contract at that particular time. Mr. Wolff said he was busy. Within the course of two or three days we did go into it, and upon going into it we were rather surprised to see that the men had demanded or requested practically the same as they had requested in their previous contract, with the exception of
310 some few individual increases, and we immediately, on comparing the 1920 contract with the proposed contract of 1921 set about to adjust the schedule of wages or rates which we thought would be fair. We did not get any instructions from Chicago, except our standard, uniform instructions pertaining to the production of meat. Aside from that our instructions are that we are

the ground, we know the conditions, we know in this case the persons involved and their ability, and it is up to Mr. Wolff to decide upon the facts of that kind. The action of the Charles Wolff Packing Company in not entering into this agreement was upon the responsibility of Mr. Wolff and myself, as superintendent and general manager of that company.

Under the old contract we were compelled at times to work overtime and to pay the extra rate, as it was impossible to get men for two or three hours. The live stock is brought here by the owners to sell and the packing company takes the offerings that are made each day and have no con-rol over whether there will be 2,000 hogs offered in a week or 5,000. (At this point Mr. Sheehan described in detail the process of killing and cutting of hogs, which is not given here because practically the same testimony is given in the evidence before the Commissioner and is abstracted elsewhere herein.)

With reference to Mr. Blair's testimony on the day referred to in his complaint, I discovered one man's production or one man's trimming, among which were some pieces which were entirely too fat. I called the foreman's attention to it, that the trimmings were too fat, and we were not getting our full production of lean trimmings, and instructed to have the men be more careful in making the trimmings, to make them leaner and insist on full production of the lean trimmings. I did not give any instructions to the effect that trimmings already trimmed should be retrimmed on any of the men's own time. About two o'clock in the afternoon these four men called upon me with reference to that matter. They were dressed in their street clothes. These four men approached me, with Mr. Blair acting as their spokesman, and asked me what I was going to do with reference to this trimming down there. I asked them what they meant. They said: "The foreman instructed us that we had to retrim them or cut them down leaner. Now, is there any more money in it?" I answered: "No, I can't say there is any more money in it. The trimmings are not worth what we are paying for them now, and there is no more money in it. No, sir." He said, "Well, we have asked for *out* time," and the men left us.

"Judge Huggins: Now, Mr. Sheehan, I want to ask you a question or two about the conduct of your business down there. I think you stated you had no control over the receipts of live stock. I wish you would explain that a little further. As I understand it, some of your live stock is bought in the surrounding country here and some you ship in by rail. Is that true?

"A. Yes sir.

"Judge Huggins: Of course, as to what is brought in from surrounding country you do not have notification as to when it is to come, or anything of that kind?

"A. We have notification after it has started on its way. The shipper will probably notify us he is shipping one load tonight, or two loads, whatever it may be, by wire.

"Judge Huggins: Does any of this live stock come in by wagon or truck?

"A. Yes sir.

"Judge Huggins: What proportion of it?

"A. That will vary. It is seasonable. The sea-on regulates that to a big extent. It may possibly be a dozen hogs, or it might be 300 a day" (Pp. 822-823).

311 In no event do we attempt to cut the hogs the same day they are killed. Outside of the killing gang, providing it is not in the season where their work is the heavies there would be no disadvantage in the 8 hour day. We have regular hog pens and cattle pens for holding the live stock after it comes in. We don't have to kill them all the next day after they arrive, but are leaving ourselves liable to loss in the way of shrinkage and possibly of disease. We are fixed to feed them for a day or two. Within certain limits we could control the quantity of killing from day to day. Thirteen and one-half to fifteen per cent of the live weight of the hog is put upon the market for immediate sale as fresh pork. It is that market condition that regulates our trade and our operations to correspond.

Cross-examination:

Up to the time the hog is hung in the killing room the work must all be done on the day the killing is done. After that they should lay over 48 to 72 hours but there is a shrinkage after 48 hours, and a deterioration after the fifth or sixth day. The average time of disposing of the 87 per cent which is not sold as fresh pork would be anywhere from 10 to 100 days. It is impossible to prevent the shrinkage that occurs naturally in five or six days, and we are going to suffer that shrinkage whether it stays in the cooling room 48 hours to 74 hours. The killing gang was reduced last summer between 10 and 12 men, and I found I did not kill any more hogs with the gang full than with the gang short.

I am not able to state whether or not the inefficiency I have complained of was due in part to the speed of the chain. We worked with a faulty chain during the entire year that is covered by the figures I have given, with the possible exception of eight days in February. I did not think it was necessary to repair the chain until it got to be a source of annoyance.

I don't know anything about the ability of the stockyards to control the supply of live stock that comes into their yards. A loss of hogs kept over night or for 24 hours in the stockyards loses by shrinkage. We do not weight them up, do not buy them until they are watered and fed. I do not know any reason why they are fed and watered. I do not know any reason why they should shrink any more in the yards than they did in the car. The shrinkage on cattle is due to the fact that they won't eat or won't drink under changed conditions, but the hogs will fatten in the stockyards.

I don't know of any trouble with the men except what I refer to in my testimony yesterday. I don't remember that Mr. Wells has had occasion to reprimand me for my unfriendliness to the

orking people or my failure to co-operate with them. (Pp. 823-872).

CHARLES WOLFF, Jr., recalled:

We have an understanding with our shippers that they are to otify us and keep us fully informed as to when they expect to ake a shipment, and we can control the live stock receipts to a ertain extent. It has been our experience that a number of ship-ers, regardless of this understanding, ship us without notification. hen there are others also ship us notwithstanding the fact that e notify them to the contrary. It has been our experience that ery often our receipts will exceed our estimated receipts by ap-roximately 1,000 head of hogs. That has been one of the most difficult things we have to control. The wagon receipts run
12 from 25 to 30 per cent of the total receipts, or approximately 900 a week. Sometimes it exceeds that and sometimes it is ess. (Pp. 873 —.)

W. E. MAY, recalled as a witness on behalf of the complainants, estified substantially as follows:

We used to kill 500 hogs in two hours or less time. The phrase set for 225" in the contract means the speed of the chain and ot the average killing" (pp. — 899).

13 In addition to the testimony as above abstracted a number of witnesses on behalf of the complainant testified concerning he cost of living and the difficulties in subsisting upon the wage aid. The general substance of this testimony was that the prices harged by retail merchants, landlords, etc. for the necessities of life ad not materially changed between January, 1920 and January, 921; and such of these witnesses as were workers at the Wolff Pack-ng Company plant testified that they had difficulty in subsisting pon the wage paid under the contract of 1920 and could not supply hemselves and their families with a sufficient quantity of the neces-ties and comforts of life to live in a decent manner upon the wage naugurated by the Wolff Packing Company in January, 1921. On ehalf of the complainants there was also testimony showing state nd governmental statistics as to the cost of living in the period men-oned. The witnesses who testified as to these facts were: Mr. W. E. ay, an employee of the plant; Mr. Hunter Blair, an employee of he plant; Mr. Milan C. Bozic, an organizer for the union, living at ansas City, Kansas; Mr. E. W. Jimmerson, district president of he union; Mr. Joseph B. Sands, an employee of the plant; Mr. C. D. ray, an employee of the plant; Mr. C. O. Nelson, an employee of he plant; Mr. Orlando Chase, an employee of the plant; Mr. Al-ert H. Martin, an employee of the plant; Mr. Wiley Shafer, an mployee of the plant; Mrs. Daisy Foster, an employee of the plant; rs. Susie Knisely, an employee of the plant; Mr. H. W. Sawyer, n employee of the plant; Mr. G. A. Engh, accountant for the Court

of Industrial Relations; Mrs. H. W. Sawyer, wife of an employe of the plant; and Mrs. George Hewins, wife of an employee of the plant.

On behalf of the respondent considerable testimony was introduced concerning the cost of living in general and in Topeka.

314 The general substance of this evidence was that there had been a decline in the retail prices of necessities of life between January, 1920 and January, 1921, which decline was variously estimated by these witnesses as from 10 to 30 per cent. The witnesses who gave this testimony were: Chas. Wolff, Jr., president of the Wolff Packing Co., Charles Houska, manager of the wholesale market and beef department for the Wolff Packing Co., Glenn Morehead of the Dibble Grocery Co., W. C. Stephenson, in the real estate and loan business; J. B. Walker, vice-president of the Pelletiers Store Co. of Topeka.

(Here follows balance sheet, marked page 315.)

Assets.	Current period.
A. Cash on hand	125.00
B. Cash on deposit	26,777.69
C. Customers' accounts receivable	149,602.42
D. Miscellaneous accounts receivable	15,293.20
F. Suspense accounts	8,476.66
G. Customers' notes receivable	164.57
H. Merchandise inventories	408,556.27
L. Merchandise on consignment	22,642.96
J. Inventory supplies—plant	52,825.34
Inventory supplies—office	.....
Transportation claims	.....
E. Inter-company accounts	7,812.75
K. Miscellaneous inventory	11,461.88
Total current	703,738.74
M. Securities owned	4,502.00
Advances to employees	.....
N. Memberships	100.00
O. Outside real estate mortgage	2,800.00
Sundry investments	.....
Selling company	.....
P. Wolff Pkg. Co. stock	3,630.00
Total other assets	11,032.00
Q. Land	62,300.00
Leaseholds	.....
R. Buildings & yards	980,213.39
Railroad siding	.....
S. Machinery & equipment	637,885.23
T. Office furniture & fixtures	9,634.07
Store fixtures	.....
U. Delivery equipment—stable, auto	19,461.53
Undistributed construction	.....
V. Dwellings	12,726.00
Total fixed	1,722,220.22
Prepaid interest	.....
W. Prepaid insurance premiums	6,379.29
Y. Prepaid taxes	500.00
X. Credit dept. expense	1,279.43
Z. Stationery	3,857.25
Total deferred	12,015.97
Total assets	2,449,006.93

Approved. Chas. Wolff, Jr., Manager.
Approved. E. M. Waldele, Accountant.

EXHIBIT A-H.

Allied Packers, Incorporated.

Balance Sheet.

Plant, Topeka, Kansas. 5 Weeks; Date, April 30, 1921.

Ind.	Previous period.	Increase, decrease.		Liabilities.
00	125.00	.....		Notes payable.....
38	41,160.72	14,380.03*	AA.	Accounts payable—unpaid purcha
12	117,443.80	32,158.62	BB.	Expenses, etc. .....
20	8,583.30	6,710.90	DD.	Unpaid payroll.....
36	9,120.35	643.69*		Accrued interest.....
57	304.57	140.00*	EE.	Accrued insurance.....
27	424,250.00	15,693.73*	CC.	Accrued taxes.....
06	21,093.43	1,549.53	FF.	Wolff Pkg. Co. stock reserve.....
34	31,249.46	21,575.88		
..	.....	.....		
..	.....	.....		
75	271,787.89	263,975.14*		
38	4,652.99	6,808.89		
74	929,771.51	226,032.77*		Total current.....
00	4,502.00	.....	GG.	Reserve for depreciation.....
..	50.00	50.00*	HH.	Reserve for bad debts.....
00	100.00	.....		Reserve for notes receivable.....
00	2,800.00	.....		Reserve for transportation claims
..	.....	.....	II.	Reserve for contingencies.....
..	.....	.....		
00	.....	3,630.00		
00	7,452.00	3,580.00		Total reserves.....
00	62,300.00	.....		Current account.....
..	.....	.....	KK.	Previous fiscal period.....
39	988,243.69	8,030.30*	LL.	Current fiscal year.....
..	.....	.....		Loan account.....
28	625,387.66	12,497.57		
07	9,619.07	15.00		Net current account.....
..	.....	.....		
58	19,461.53	.....		
..	473.46	473.46*		
00	12,726.00	.....		Profit & loss.....
22	1,718,211.41	4,008.81		
..	.....	.....		(Increase or decrease must agree
29	1,522.09	4,857.20		come & expense statement.)
00	.....	500.00		
3	1,450.43	171.00*		
25	3,283.28	573.97		
97	6,255.80	5,760.17		
93	2,661,690.72	212,683.79*		Total liabilities.....

	Current period.	Previous period.	Increase, decrease.
.....	.....	.....	.....
purchases.....	35,642.63	25,697.56	9,945.07
.....	3,383.67	2,274.95	1,108.72
.....	7,433.95	6,294.24	1,139.71
.....	.....	.....	.....
.....	2,804.57	2,232.46	572.11
.....	16,329.21	14,429.21	1,900.00
.....	3,630.00	.....	3,630.00
.....	69,224.03	50,928.42	18,295.61
.....	450,969.25	442,999.25	7,970.00
.....	9,793.32	9,253.03	540.29
.....	.....	.....	.....
elaims.....	.....	.....	.....
.....	3,024.42	3,024.42	.....
.....	463,786.99	455,276.70	8,510.29
.....	.....	.....	.....
.....	2,042,550.30	2,041,026.50	1,523.80
.....	28,805.09	.....	28,805.09
.....	.....	259,253.32	259,253.32*
.....	2,071,355.39	2,300,279.82	228,934.43*
.....	155,359.48*	144,794.22*	10,565.26*
agree with in- t.)			
	155,359.48*	128,895.94	10,565.26*
.....	2,449,006.93	2,661,690.72	212,683.79*

EXHIBIT A-1.

Allied Packers, Incorporated.

Allied Packers, Incorporated.

Plant, Topeka, Kansas.

Income and Expense Statement, 5 Weeks Ending April 30, 1921.

Inventory Beginning Period		399,651.81	Sales During Period:		
			Customers		367,260.99
Purchases During Period:			Inter-Company—Detail by Plant:		
Cattle		57,302.77	Wheeling		6,664.71
Hogs		212,547.23	Detroit		8,884.34
Sheep		342.98	Richmond		15,061.16
Calves		2,163.44	Export		34,822.40
Produce		38,515.39	Weight Sold During Period	2,617,942 Lbs.	
Inter-Company—Detail by Plant		.....	Gross Sales		432,693.60
			Deductions:		
			Freight Outbound	19,614.37	
			Allowances	1,312.42	
			Returned Goods	237.10	
			Consgt. P. & L.	193.01	
					21,356.90
		710,523.62	Net Sales		411,336.70
Expenses:					
Payrolls—Plant	32,692.26				
Selling	4,336.93				
Office	6,796.85				
		43,826.04			

Income and Expense Statement.—Continued.

Supplies	7,619.29	Inventory End of Period	394,485.96
Packages	9,422.27		
Paper and Twine			
Power—Heat—Light	10,622.95		
Water			
Repairs	575.12		
Factory Expense	249.72		
Government Inspector's Overtime			
Reicing	500.00		
Traveling Expense Salesmen	3,678.02		
Loading and Shipping			
Garage and Stable			
Commissions and Brokerage	2,589.95		
Advertising	173.18		
Outside Drayage	1,116.37		
Telephone and Telegraph	1,317.55		
Stationery	625.00		
Postage	261.14		
Exchange	296.85	Miscellaneous Earnings (Detail):	
Car Rental	206.65	Interest Earned	124.50
Dues and Subscriptions		Discounts Earned	
Legal and Professional Services	898.11	Live Stock Sales	90.83
Insurance	1,045.89	Rental Income	52.00
Taxes	1,900.00	White Eagle Oil Adj.	5,163.83
Interest	4,625.19		
Depreciation	7,970.00		
Donations	44.34		
Provision for Bad Debts	1,081.66		
Provision for Transportation Claims	89.93		

	44.34		
Provision for Bad Debts	1,081.66		
Provision for Transportation Claims	89.93		
Wholesale Market Expense		Net Loss for Period	10,565.26
Miscellaneous	604.01		821,819.08
Central Office Administrative	5,819.01		
" Pay Roll	2,201.92	Bring Down Net Profit or Loss*	10,565.26
Bond Interest	1,935.30		
		Add Accumulated Net Profit or Loss* for Previous Periods of Current Year	144,794.22
Net Profit for Period			
	821,819.08		
		Profit or Loss* Per Balance Sheet	155,359.48

Approval: E. M. WALDELE, *Accountant.*
Approval: CHAS. WOLFF, JR., *Manager.*

[*Word "loss" in red in copy.]

EXHIBIT A-J.

Allied Packers, Incorporated.

Cumulative.

Plant, Topeka, Kansas.

Income and Expense Statement, Weeks Ending Oct. 30, 1920, to Apr. 30, 1921.

Inventory Beginning Period	321,386.96	Sales During Period:	
		Customers	1,972,668.24
		Inter-Company—Detail by Plant	
		Canadian	21,100.13
		Buffalo	3,307.08
		Detroit	26,436.51
		Richmond	57,750.43
		Wheeling	6,664.71
		Export	151,158.37
Purchases During Period:		Weight Sold During Period 13,613,532 Lbs.	
Cattle	240,936.30		
Hogs	1,357,304.07		
Sheep	2,326.20		
Calves	11,608.80		
Produce	203,997.57		
Inter-Company—Detail by Plant	.....	Chicago	9,417.07
		Boston	34,233.86
		Gross Sales	2,282,736.40

Deductions:		
Freight Outbound	80,542.11	
Allowances	28,490.56	

		2,137,559.90
Expenses:		
Payrolls—Plant	177,966.73	
Selling	21,736.54	
Office	38,076.62	
		237,779.89
Supplies		29,022.97
Packages		51,798.82
Paper and Twine		
Power—Heat—Light		68,151.92
Water		
Repairs		3,550.34
Factory Expense		2,126.35
Government Inspectors' Overtime		1,390.33
Reicing		2,150.00
Traveling Expense Salesmen		15,593.85
Loading and Shipping		555.97
Garage and Stable		
Commissions and Brokerage		17,621.75
Advertising		971.07
Outside Drayage		5,608.11
Telephone and Telegraph		5,882.64
Stationery		2,683.76
Postage		1,099.82

Deductions:		
Freight Outbound	80,542.11	
Allowances	28,490.56	
Returned Goods	12,621.75	
Consgt. P. & L.	3,512.06	
		125,166.48
Net Sales		2,157,569.92
Inventory End of Period		394,485.96

Income and Expense Statement.—Continued.

Exchange	830.97	Miscellaneous Earnings (Detail)	
Car Rental	844.02	Interest Earned	409.92
Dues and Subscriptions		Discounts Earned	
Legal and Professional Services	1,018.65	Livestock P. & L.	817.58
Insurance	6,933.46	Rental Income	786.00
Taxes	6,768.28	Pay Roll Bonus	400.00
Interest	20,722.33	White Eagle Oil Adjustment	5,163.83
Depreciation	41,444.00		
Donations	358.01		
Provision for Bad Debts	4,190.70		
Provision for Transportation Claims	292.91		
Wholesale Market Expense		Net Loss for Period	155,359.48
Miscellaneous	6,642.83		
Outside Storage	132.06		2,714,992.69
Central Office Administrative	19,896.32	Bring Down Net Profit or Loss*	155,359.48
" " Pay Roll	9,847.22		
Bond Interest	10,063.46		
Unpaid Pay Roll Checks	69.59	Add Accumulated Net Profit or Loss* for Previous Periods of Current Year	
Plant Pay Roll Adj.	1,390.39		
Net Profit for Period			
	2,714,992.69	Profit or Loss* Per Balance Sheet	155,359.48

Approval: E. M. WALDELE, *Accountant.*
Approval: CHAS. WOLFF, JR., *Manager.*

318 **RESPONDENT'S EXHIBIT A.**

February 25th, 1921.

The Board of Directors and Stockholders, the Charles Wolff Packing Company, Topeka, Kansas.

GENTLEMEN: We submit herewith report of our examination of the accounts and records of the Charles Wolff Packing Company—Topeka, Kansas, a Subsidiary of the Allied Packers Incorporated, Chicago, as of the close of business October 30th, 1920.

The scope of our audit did not include the examination of the operations for the year, but was limited to the verification of the Asset and Liability Accounts of the Company at October 30th, 1920, as set forth in the annexed Balance Sheet, which is submitted subject to our following comments outlining the extent of our verification.

Cash on hand and on deposit at October 30th, 1920, aggregating $44,897.68, comprised the amounts set forth in the Summary of Cash included herewith. Cash on hand was verified by actual count, or was accounted for in the cash deposits subsequent to October 30th, 1920. Cash on deposit was reconciled with balances reported on signed statements received by us from the depository banks.

We have shown on the Summary of Cash the adjustments made by us in the cash balances carried on the books, and it will be noted that we have reduced the Bank of Topeka Payroll Deposit Account in the amount of $1,388.89, representing net discrepan-ies located by us in our reconcilement of this account at October 30th, 1920. In connection with our examination, we noted that this account had not been reconciled since May 22nd, 1920, the date on which the account was opened.

In accordance with instructions, we did not audit the detailed Cash Transactions for the year ended October 30th, 1920.

Customer's Note Receivable in the amount of $94.31 represents note of J. G. Spark and Wife, dated October 5th, 1920, due December 5th, 1920, with interest at the rate of 8%, was examined by us.

319 Customer's Accounts Receivable aggregating $265,410.34, were carried on the books at October 30th, 1920, and pursuant to request we did not correspond with the individual debtors to verify the book balances. We have, however, made a thorough examination of these accounts and submit below a summary of the Accounts Settled and the Accounts Unpaid at December 4th, 1920, classified as to date of charges.

Approval: E. M. WALDELE, *Accountant.*
Approval: CHAS. WOLFF, JR., *Manager.*

Date of charges.	Balance 10-30-1920.	Settled at 12-4-1920.	Unpaid at 12-4-1920.
October 1920.....	$225,981.65	$198,986.78	$26,994.87
September 1920.....	21,423.99	11,598.89	9,825.10
August 1920.....	8,394.28	2,855.01	5,539.27
May, June, July, 1920...	8,637.63	1,797.74	6,839.89
February, March, April, 1920	913.62	44.73	868.89
November, December, 1919 & January, 1920..	59.17	.....	59.17
	$265,410.34	$215,283.15	$50,127.19

The credits to Accounts Receivable aggregating $215,283.15 in
clude the amount of $4,968.85, representing credits for Returns
Allowances, Etc., which together with Possible Losses, Discounts
and Allowances, was covered in allowance of $10,000.00 for this
purpose, provided on Balance Sheet.

At the date of our examination we found the Accounts Receiv
able records in a deplorable condition, and we were advised that the
General Ledger Control had been partly built up from postings to
Customers' Ledger, instead of being compiled from the original rec
ords. We found that numerous entries had been made to the Con
trol Account, presumably to adjust same to the aggregate amount
of the individual accounts at various dates; one of these entries
amounting to $33,207.93 being credited to "Sales Adjustment" ac
count under date of October 18th, 1920, with the explanation "To
bring the Accounts Receivable Control to meet the figures shown
to be a correct balance." We noted further that the Control Ac
count was credited with the amounts of $7,500.00 and $6,500.00
at different dates, to cover estimated Returns and Allowances, and
all of these amounts together with sundry other discrepancies lo
cated by us, have been applied as adjustments of sales and allow
ances as shown by the books.

320 In addition the the amounts above specifically commented
upon, numerous other adjustments were made in the Con
trol Account during the six months period ended October 30th
1920, and we are submitting herewith reconcilement of the book
balances with the aggregate Customers' Accounts Receivable stated
on Balance Sheet.

The Merchandise Inventories aggregating $441,634.35 as de
tailed on Balance Sheet, were taken and priced by the Management
and the quantities, prices and salability of the Merchandise In
ventories have been certified to us by Mr. Charles Wolff Jr., Presi
dent.

A thorough test of the clerical accuracy and the pricing of the
Inventories was made by us, and we noted that the pricing of Pack
ing House Products was based on Chicago market quotations, less
allowance for freight differential of ¼¢ per pound on sweet pickled
and dry salt products, and 14¢ per cwt., on lard. The allowance for

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freight differential on pork products was approximately $2,000.00 less than the actual freight cost between Topeka and Chicago, but no adjustment of this amount was made by us in the Inventory valuation, as we were advised that the bulk of the Company's shipments were moving away from Chicago.

No provision has been made on Balance Sheet to cover shrinkage in Inventory values subsequent to October 30th, 1920, but we noted that based on market prices at December 4th, 1920, the shrinkage on stock remaining on hand at that date from the October 30th Inventory, amounted to approximately $25,000.00, distributed as follows:

Sweet Pickle and Dry Salt Pork	$16,300.00
Hides	8,700.00
	$25,000.00

The book value of all Consignment Accounts was reduced by us to the market basis at October 30th, 1920, or to the realized value thereon subsequent to that date.

We have summarized on Balance Sheet, under the caption of Other Assets, Personal and Sundry Accounts Receivable, Railroad and Insurance Claims, Securities Owned, Etc., aggregating $41,771.77. Exhibits are included herewith showing in detail
321 the Personal and Sundry Accounts Receivable, Claims, and Securities owned.

The account of the White Eagle Oil & Refinery Company in the amount of $10,072.60, represents claim filed against that Company covering loss for non-delivery of fuel oil in accordance with contract entered into by them with The Charles Wolff Packing Company. We were advised by the Management that full recovery on this claim was anticipated. We have included in Personal and Sundry Accounts Receivable the amount of $3,453.36, which, we were advised, was due from the old Stockholders of the Charles Wolff Packing Company, in connection with the purchase of the stock of that Company by the Allied Packers Incorporated.

Land, Buildings, Machinery and Equipment are stated on Balance Sheet at the depreciated book values, aggregating $1,298,310.06, as set forth in detail on exhibit included herewith. The stated book values are based on the appraised values as of December 1st, 1919, as set forth in the Appraisal Report of the American Appraisal Company, plus additions aggregating $25,121.25 from date of appraisal to October 30th, 1920. These additions have been examined by us, and in our opinion represent expenditures which have been properly capitalized. Depreciation Allowances aggregating the amount of $59,206.06 have been provided on the books from the date of appraisal to October 30th, 1920, against which a loss of $725.00 on Machinery sold has been charged.

Current Liabilities are summarized on Balance Sheet and represent all liability of the Company for current purchases and expenses, including the account of the parent corporation (The Allied Pack-

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ers Incorporated, Chicago) in the amount of $742,610.89, ascertained from the records and data examined by us. We have received a signed statement from the Management that the amounts shown on Balance Sheet represent all known Unpaid and Accrued Liabilities of the Company at October 30th, 1920, and that the Company was not contingently liable as endorser, guarantor or otherwise. We were further advised that no large purchase contracts were in effect at October 30th, 1920, and that it is the present policy of the Company to limit their purchases to current needs.

322 The entire authorized issue of Capital Stock amounting to $600,000.00, consisting of 6,000 shares of Par Value of $100.00 each, were shown by the records as outstanding at October 30th, 1920, in the names of the shareholders set forth in exhibit included herewith.

Following is a summary of the Profit and Loss-Deficit Account for the year ended October 30th, 1920:

Deficit, November 1st, 1919.....	$55,750.35
Add: Net Loss for fiscal year ended Oct. 30th, 1920.	179,353.85
Profit & loss-deficit, October 30th, 1920.....	$235,104.20

We include herewith exhibits of the Income and Expense, together with supplementary schedules, showing detail of operations for the year resulting in the loss of $179,353.85, after deducting depreciation in the amount of $59,206.06.

Unearned Surplus in the amount of $922,120.81 represents appreciation in the book value of Land, Buildings, Machinery and Equipment, based on appraisal of the American Appraisal Company at December 1st, 1919, hereinbefore commented upon by us.

We include herewith reconcilements of Profit and Loss-Deficit Account, and Unearned Surplus Account, which are included on the books in the account of the Allied Packers Incorporated, Chicago, showing the adjustments made by us in these accounts in the preparation of our report.

We have hereinbefore commented upon the condition of the records with particular reference to Customer's Accounts, and attention is directed to the fact that in general we found the accounting records of the Company in a very unsatisfactory condition. We noted, however, that at the time of our examination the accounting department was under the direct supervision of a representative of the Chicago office of the Allied Packers, Incorporated, and were advised that the prevailing conditions would be promptly remedied.

Should you desire any further information relative to our examination we shall be pleased to have you so advise us. Very truly yours, Ernst & Ernst.

(Here follows balance sheet, marked page 323.)

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Liabilities.

rage, Expenses, etc....	$51,602.51		
.....	2,418.85		
		$54,021.36	
.....	8,992.12		
.....	5,359.30		
(Estimated).....	17,000.00		
		31,351.42	
—Chicago.....		742,610.89	
			$827,983.67
000 shares).....		$600,000.00	
.....	$55,750.35		
October 30th, 1920..	179,353.85		
		235,104.20*	
anent Assets, based on			
.....		922,120.81	
			$1,287,016.61
			$2,115,000.28

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The Charles Wolff Packing Company, Topeka, Kansas.

For the Fiscal Year Ended October 30th, 1920.

Income:			
Sales		$6,388,834.99	
Transfers to Affiliated Companies		1,051,890.37	
			$7,440,725.36
Less:			
Returns & Allowances		$53,336.95	
Freight, Drayage & Re-icing		179,560.44	
			232,897.39
			$7,207,827.97
Cost of sales and inter-company transfers:			
Inventory—November 1st, 1919	$437,328.99		
Purchases, less discount	6,052,627.77		
Transfers from Affiliated Companies	69,959.89		
Freight & Storage	70,727.37		
Operating Expense—Exhibit included herewith	735,030.09		
		$7,365,674.11	
Deduct: Inventory October 30th, 1920		407,328.56	
			$6,958,345.55
Gross profit			249,482.42

Income & Expense.—Continued.

Expense:		
Selling—Exhibit included herewith	$108,982.61	
General & Administrative—Exhibit included herewith	149,980.14	
		$258,872.75
Operating [loss]*		$9,390.33*
Other deductions:		
Exhibit included herewith	$183,704.59	
Less other income:		
Exhibit included herewith	13,741.07	
		169,963.52
Net [loss]* for the year		$179,353.85*

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325 *Detail of Expense.*

The Charles Wolff Packing Company, Topeka, Kansas.

For the Fiscal Year Ended October 30th, 1920.

Operating:

Labor	$433,857.69
Fuel	108,339.69
Packing Material	144,062.15
Repairs	31,261.87
Maintenance Autos, Horses & Wagons	2,713.00
Lubricating Oil	2,164.28
Am-onia	2,663.02
Wood	2,552.59
Factory Supplies & Expense	7,415.80
	$735,030.09

Selling:

Salesmen's Salaries	$33,229.35
Traveling	28,665.70
Brokerage	41,339.78
Advertising	2,267.78
Central Office Charge—Export Expense	3,480.00
	$108,982.61

General & administrative:

Officer's Salaries	$8,065.27
Office Salaries	64,450.56
Taxes	19,666.87
Insurance	17,059.05
Donations	790.56
Telephone & Telegraph	13,237.86
Postage	2,666.83
Sundry	3,803.42
Stationery & Office Supplies	12,392.04
Legal & Professional	1,142.14
Exchange	978.97
Traveling	5,175.13
Mercantile Reports	461.44
	$149,890.14

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326 *Detail of Other Deductions & Other Income.*

The Charles Wolff Packing Company, Topeka, Kansas.

For the Fiscal Year Ended October 30th, 1920.

Other deductions:

Central Office Charges:		
Interest—Notes Payable	$67,343.31	
" Bonds	20,127.12	
Chemical Control	328.08	
General Expense	12,571.00	
		$100,369.51
Loss on sale of bonds to Allied Packers Inc.		2,552.71
Non-Income stock written down		1,748.00
Accounts & Claims charged off		1,054.53
Provision for Allowances, Discounts and Doubtful Accounts		9,011.12
Provision for Doubtful Railroad Claims		4,100.00
Depreciation		59,206.06
Refrigeration Cars Expense:		
Less Earnings		2,324.75
Interest Charges	$5,658.44	
Less Interest Earnings	2,460.69	
		3,197.75
Entries to force balances, differences not located, etc.		140.15
		$183,704.58

Other income:

Rental Received (Net)	$724.00
Outstanding Checks written off	575.17
Old Houses sold	90.00
Wolff Adjustment Account difference written off	219.35
Claim for Fire Loss of October 9th, 1920	2,886.35
Credit of Allied Packers Inc., in connection with Capital Stock purchase	9,246.00
	$13,741.07

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Summary of Cash.

The Charles Wolff Packing Company, Topeka, Kansas.

October 30th, 1920.

On hand:	Book balance.	Adjustments. Add.	Adjustments. Deduct.	Adjusted balance.
Petty Cash:				
Wholesale Market	$25.00	.....	.....	$25.00
General Office	100.00	.....	.....	100.00
Undeposited Receipts	.....	$843.35A	.....	843.35A
On deposit:	$125.00	$843.35	.....	$968.35
Bank of Topeka—Regular %	$13,218.09	$96.44B	$26.25C	$13,288.28
Do. —Pay Roll %	500.00	.....	1,388.89D	888.89*
Do. —Live Stock %	4,000.00	.....	725.69E	3,274.31
Canal Commercial Trust & Savings Bank	1,321.75	9,281.68A	3.35A	10,600.08
Central National Bank	931.16	.....	.....	931.16
Commerce Trust Company	11,633.98	1,302.15A	.....	12,936.13
Exchange National Bank	458.22	738.87A	.....	1,197.09
Security National Bank	650.77	.....	.....	650.77
Security Bank & Trust Company	613.85	.....	.....	613.85
Union & Planters Bank & Trust Co.	644.52	682.13A	.10A	1,326.55
	$33,972.34	$12,101.27	$2,144.28	$43,929.33
Total	$31,097.31	$12,944.62	$2,144.28	$44,897.68

[*Red in copy.]

(NOTE A.)—Collections prior to October 30th, 1920, not entered on books at that date.

(NOTE B.)—Check of C. D. Ray dated October 27th, 1920, cancelled on books November 16th, 1920.

(NOTE C.)—Check issued to F. L. Varnum, October 30th, 1920, not entered on cash book.

(NOTE D.)—Pay Roll Account had not been reconciled from date of opening, May 22nd, 1920, and adjustment represents discrepancy in book balance at October 30th, 1920.

(NOTE E.)—Reversing book entry transferring disbursements to credit of Accounts Payable.

328 *Reconcilement of Accounts Receivable.*

The Charles Wolff Packing Company, Topeka, Kansas.

October 30th, 1920.

Balance, October 30th, 1920, As shown by books:

Accounts Receivable Control.....		$277,661.06	
Sundry Draft Account		15,580.17	
Live Stock Sales Account.....		501.20	
			$293,742.43
Adjustment:			
Deductions:			
To transfer Collections on Accounts receivable carried in Suspense Account.....	$9,786.87		
Less Uncollected Accounts carried in Suspense Account..	2,441.16		
		$7,345.71	
Collections on Accounts Receivable not credited at October 30th, 1920:			
Cash Sales.....	$843.35		
Commerce Trust Company	1,302.15		
Exchange National Bank	738.87		
Union Planters Bank & Trust Co.	682.13		
Canal Commercial Trust & Savings Bank	9,281.68		
		12,848.18	

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Consignment Accounts included in inventory on Balance Sheet....		6,128.94	
Sundry Accounts included in Other Assets on Balance Sheet		1,816.89	
To Charge off donations carried in Accounts Receivable subsequently written off books.....		176.00	
To charge off old balances subsequently transferred on books to Bad Dept Reserve.....		1,876.77	
Garden Seed Fund Account charged off		25.00	
Brokerage erroneously charged to Accounts Receivable		64.31	
Error in invoice Canada Casing Company		445.25	
Transferring credit erroneously made to Storeroom Account....		26.35	
To write off duplicate charge for machinery returned		100.00	
		$30,853.40	
Less: Additions:			
Customers Credit Balances	$2,414.64		
Erroneous credit to Accounts Receivable..	4.80		
Adjustment of Control Account to bring into agreement with aggregate of individual accounts at October 30th, 1920.....	101.87	2,521.31	28,332.09
Balance October 30th, 1920, as shown on balance sheet			$265,410.34

329 *Personal & Sundry Accounts Receivable.*

The Charles Wolff Packing Company, Topeka, Kansas.

October 30th, 1920.

Carl Erickson	$100.0
A. P. Freeman	600.0
J. T. Meredith	22.5
Mrs. Dow Mulvane	2.7
Emmett Petty	7.1
C. Houska	.3
Huck Sales Company	148.8
Pacific Fruit Express	30.3
Swift and Company	273.6
Kansas Employers Inter-Insurance Exchange—Deposits and accumulated savings	2,789.3
Miscellaneous Rent Receivable	33.7
C. F. Dagget	375.0
Bank of Topeka—forged checks	71.6
Due from old Stockholders of The Charles Wolff Packing Company	3,453.3
	$7,908.8

330 *Railroad and Insurance Claims.*

The Charles Wolff Packing Company, Topeka, Kansas.

October 30th, 1920.

Transportation companies:

Atchison, Topeka, & Santa Fe Ry.	$3,857.87		
American Railway Express...	949.56		
Chicago, Rock Island & Pacific Ry. Co.	5,081.74		
Missouri Pacific Ry. Co.	3,955.05		
Union Pacific R. R. Co.	3,978.16		
		$17,822.38	
Less: Allowance for Losses		4,500.00	
			$13,322.3

Fire insurance claims:

Hogs lost in transit during August	$179.54	
Fire in Smoke House October 9th, 1920	2,886.37	
		3,065.9
		$16,388.2

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331 *Securities Owned.*

The Charles Wolff Packing Company, Topeka, Kansas.

October 30th, 1920.

	Par value.	Book value.	
Stocks:			
Peoples Ice & Fuel Company—45 shares	$4,500.00	$4,500.00A	
Kansas State Fair Association—50 shares	2,500.00	1.00	
Leavenworth and Topeka R.R. Co.—50 shares	500.00	1.00	
			$4,502.00
Mortgage notes:			
C. L. Benner—dated April 3, 1918, due April 1, 1923 with interest at 7%, secured by Mortgage on approximately 5 acres of land situated in Shawnee County, Kansas		$1,500.00	
John N. and Sarah Benton—dated March 12, 1918, due March 15, 1923, with interest at 6%, secured by Mortgage on 10 acres of land and 32 lots situated in City of Topeka, Kansas		1,300.00	
			2,800.00
			$7,302.00

(Note A.)—Held in trust by Prudential Trust Company, Topeka, Kansas, for account of Charles Wolff Packing Company, under trust agreement dated August 2nd, 1920, authorizing the sale of the Assets of the Company.

332 *Land, Buildings, Machinery & Equipment.*

The Charles Wolff Packing Company, Topeka, Kansas.

October 30th, 1920.

	Appraisal reproductive values, 12-1-19.	Additions, 12-1-1919, to 10-30-1920.	Gross book value, 10-30-20.
Land	$62,300.00	.....	$62,300.00
Buildings	970,986.66	$5,689.85	976,676.51
Machinery & Equipment	612,533.75	15,654.27	628,188.02
Furniture & Fixtures	7,563.65	1,612.20	9,175.85
Automobiles & Trucks	15,640.00	2,164.93	17,804.93
Teams, Wagon & Harness	931.50	.....	931.50
	$1,669,955.56	$25,121.25	$1,695,076.81
Dwellings	12,801.00	.....	12,801.00
	$1,682,756.56	$25,121.25	$1,707,877.81

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Allowance for Depreciation.

	Reducing to sound values at 12-1-1919.	12-1-1919, to 10-30-1920.	Total.	Net book value 10-30-2
Land B.....	.....	.....	.....	62,300.00
Buildings	$179,364.43	$18,511.88	$197,876.31	778,860.00
Machinery & Equipment	155,913.24	34,586.08	190,499.32	437,688.70
Furniture & Fixtures..	1,873.60	769.80	2,643.40	6,532.45
Automobiles & Trucks..	6,228.50	2,935.19	9,163.69	8,641.21
Teams, Wagon & Harness	453.77	163.36	617.13	314.37
	$343,833.54	$56,966.31	$400,799.85	$124,276.96
Dwellings	7,253.15	1,514.75	8,767.90	4,033.10
	$351,086.69	$58,481.06	$409,567.75	$1,298,310.00

333 *Shareholders of Record.*

The Charles Wolff Packing Company, Topeka, Kansas.

October 30th, 1920.

Shareholders.	No. of shares
Allied Packers, Incorporated.....	5,9
Andrews, Frank A.....	
Arthur, Alfred L.....	
Becker, D. W.....	
Harris, Herbert M.....	
Haun, Frank A.....	
Koenitzer, Henry W.....	
Mulvane, David	
Oth, Simon S.....	
Self, Madison	
Wells, Charles A.....	
Wolff, Charles, Jr.....	
Wolff, Harry H.....	
Total	6,0

Reconcilement of Profit & Loss Deficit

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Reconcilement of Profit & Loss-Deficit.

The Charles Wolff Packing Company, Topeka, Kansas.

October 30th, 1920.

Profit & Loss—[Deficit]* October 30th, 1920, as carried on books in the account of Allied Packers, Inc.		$223,705.20*
Adjustments:		
Additions to Loss:		
Erroneous Credit to Storeroom Account		$26.35
Adjustment of Accrued Taxes		505.61
Adjustment of Consignment Accounts to Inventory value or realization value:		
Huck Sales Co.	$4,396.11	
W. D. Cooper	613.63	
Fred Worns	890.44	
W. R. Lawrence	571.76	
		6,471.94
Employes Relief Association Account written off		96.44
Adjustment of plant Pay Roll Deposit Account		1,388.89
Sundry Expenses, etc., Not on books		3,737.65
Elimination of old balances in Accounts Receivable charged off books subsequent to October 30th, 1920		2,052.77
Returned Machinery charged to Account twice		100.00
Garden Seed Loan Fund Account charged off		25.00
Brokerage charged to Accounts Receivable in error		64.31

Reconcilement of Profit & Loss-Deficit.—Continued.

Error in pricing Canada Casing Co. invoice	445.25		
Repairs charged to Advance Payment Account	1,200.00		
Repairs charged to Permanent Accounts	570.50		
		$16,684.71	
Less: Deductions from loss:			
Taxes transferred to unearned Surplus from operations	$2,194.30		
Adjustment of Accounts Receivable Control (Net)	97.66		
Draft issued by bank in excess of amount paid therefor	59.08		
Advance charged Live Hog account in error	10.00		
Adjustment of Rental Income	33.50		
Erroneous Credit to Accounts Receivable for feed purchase	4.80		
Erie insurance Claims not set up on books	2,886.37		
		$5,285.71	
			11,399.00
Profit & loss—[deficit]* October 30th, 1920, as adjusted			$235,104.20*

[*Red in copy.]

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335 *Reconcilement of Unearned Surplus Account.*

The Charles Wolff Packing Company, Topeka, Kansas.

October 30th, 1920.

Balance October 30th, 1920, as transferred from account of Allied Packers, Incorporated.....		$933,061.04
Adjustment deductions:		
Improvement taxes for 1919 charged to permanent accounts after appraisal figures had been set up....	$3,632.66	
Improvement taxes for 1920 applicable to appraised value of assets as of December 1st, 1919.....	2,194.30	
Installation of equipment prior to appraisal date, included in additions to permanent accounts subsequent to appraisal date.....	5,113.27	
		10,940.23
Unearned surplus October 30th, 1920, as shown on balance sheet.....		$922,120.81

336 **RESPONDENT'S EXHIBIT B.**

Wolff Packing Company, Topeka, Kansas.

Statement of Income & Expense.

Nov. 1, 1920, to Jan. 15, 1921.

Gross Sales Nov. 1, 1920 to Jan. 15, 1921	1,042,891.92	
Less Freight, Allowances, Return Goods & Brokerage.....	57,028.27	
Net Gross Sales.....		985,863.65
Cost of Sales.....		838,697.78
Gross Profit on Sales.....		147,165.87
Other Income		1,552.52
Gross Profit		148,718.39

OSE IN CENTER

Expenses:				
Pay Roll Plant			80,036.49	.5382
" " Salesman			9,741.48	.0653
" " Office			16,802.30	.1130
Supplies			5,018.43	.0337
Packages			21,651.03	.1456
Power			36,799.56	.2474
Salesman Traveling Expense			6,642.43	.0447
Bond Interest			4,257.56	.0286
Other "			8,178.70	.0550
Central Office Admin			7,333.51	.0493
" " Pay Roll			4,394.45	.0295
Depreciation			17,534.00	.1179
Other expense:				
Factory	1,157.21			
Repairs	1,430.74			
Government inspection overtime	694.00			
Reicing Cars	650.00			
Loading & shipping	83.23			
Advertising	298.54			
Outside Drayage	2,746.98			
Telephone & Telegraph	2,513.30			
Stationery	1,058.76			
Postage	375.86			
Exchange	239.40			
Refrigerator Car Rental	291.03			
Legal Expense	16.99			
Insurance	3,720.41			
Taxes	1,068.28			
Donations	193.26			
Provision for Bad Debt	1,438.11			
Provision for Ry. Claims	24.98			
Misc'l Expense	2,352.01			
Outside Storage	66.03			
Pay Roll Adjustment	1,390.39			
Total Other Expense			21,809.51	.1466
Total Expense				1.6148 240,199.9
Net Loss				91,481.6

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337 **RESPONDENT'S EXHIBIT C.**

Wolff Packing Company, Topeka, Kansas.

Statement of Income & Expense.

Jan. 17, 1921, to Apr. 30, 1921.

Gross Sales Jan. 17, 1921 to Apr. 30, 1921	1,239,844.48	
Less Freight, Allowances, Return Goods & Brokerage	85,759.96	
Net Gross Sales		1,154,084.52
Cost of Sales		904,376.16
Gross Profit on Sales		249,708.36
Other Income		6,024.81
Gross Profit		255,733.17

Expenses:		% gross profit.
Pay Roll Plant	97,930.24	.3829
" " Salesman	11,995.06	.0469
" " Office	21,274.32	.0832
Supplies	24,004.54	.0939
Packages	30,147.79	.1180
Power	31,352.36	.1226
Salesmen Traveling Expense	8,951.42	.0350
Bond Interest	5,805.90	.0227
Other "	12,543.63	.0490
Central Office Admin	12,562.81	.0491
" " Pay Roll	5,452.77	.0213
Depreciation	23,910.00	.0935

Other expenses:

Factory Expense	969.14
Repairs	2,119.60
Government inspection overtime	696.33
Reicing Cars	1,500.00
Loading & shipping	472.74
Advertising	672.53
Outside Drayage	2,861.13
Telephone & Telegraph	3,369.34
Stationery	1,625.00

LOSE IN CENTER

			% gross profit.	
Postage	723.96			
Exchange	591.57			
Refrigeration Car Rental	552.99			
Legal Expenses	1,001.66			
Insurance	3,213.05			
Taxes	5,700.00			
Donations	164.75			
Provision for Bad Debt	2,752.59			
Provision for Ry. Claims	267.93			
Misc'l Expense	4,290.82			
Outside Storage	66.03			
Plant Pay Roll Adjustment	69.59			
Total Other Expense		33,680.75	.1317	
Total Expense			1.2498	319,611.3
Net Loss				63,878.4

338 **RESPONDENT'S EXHIBIT E.**

Wolff Packing Company, Topeka, Kansas.

Statement of Income and Expense

Nov. 1, 1920, to April 30, 1921.

Gross sales Nov. 1, 1920 to Apr. 30, 1921		$2,282,736.40	
Less freight, allowances, return goods and brokerage		142,788.23	$2,139,948.1
Inventory Nov. 1, 1920	$321,386.96		
Purchases Nov. 1, 1920 to Apr. 30, 1921	1,816,172.94		
		$2,137,559.90	
Less inventory April 30, 1921		394,485.96	
Cost of sales			$1,743,073.9
Gross profits on sale			396,874.2
Other income			7,577.3
Gross profit			404,451.5

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Expenses:			
Pay roll, plant		177,966.73	.4400
Pay roll, salesmen		21,736.54	.0537
Pay roll, office		38,076.62	.0942
Supplies		29,022.97	.0718
Packages		51,798.82	.1279
Power		68,151.92	.1685
Salesmen, traveling expenses		15,593.85	.0386
Bond interest		10,063.46	.0249
Other interest		20,722.33	.0512
Central office admin		19,896.32	.0492
Central office pay roll		9,847.22	.0243
Depreciation		41,444.00	.1025
Other expense:			
Factory expense	2,126.35		
Repairs	3,550.34		
Government inspection overtime	1,390.33		
Reicing cars	2,150.00		
Loading and shipping	555.97		
Advertising	971.07		
Outside drayage	5,608.11		
Telephone and telegraph	5,882.64		
Stationery	2,683.76		
Postage	1,099.82		
Exchange	830.97		
Refrigerator car rental	844.02		
Legal expense	1,018.65		
Insurance	6,933.46		
Taxes	6,768.28		
Donations	358.01		
Provision for bad debts	4,190.70		
Provision for Ry. claims	292.91		
Misc'l expense	6,642.83		
Plant pay roll	1,459.98		
Outside storage	132.06		
Total other expense		55,490.26	.1372
Total expense			1.3840 559,811.04
Net loss			$155,359.48

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339 **RESPONDENT'S EXHIBIT F.**

Wolff Packing Company, Topeka, Kansas.

Statement of Income & Expense.

Jan. 3, 1921, to Jan. 15, 1921, Inc.

Gross Sales Jan. 3, 1921 to Jan. 15, 1921	$194,318.55	
Less freight, allowances, return goods and brokerage	12,327.84	
Net gross sales		$181,990.71
Cost of sales		134,382.32
Gross profit on sales		$47,608.39
Other income		47.18
Gross profit		$47,655.57

Expenses:

Pay roll, plant	13,776.19
Pay roll, salesmen	1,631.80
Pay roll, office	2,840.85
Supplies	2,613.80
Packages	3,952.76
Power	4,894.72
Salesmen, traveling expenses	1,155.27
Bond interest	774.12
Other interest	1,802.00
Central office admin	1,320.86
Central office pay roll	694.67
Depreciation	3,188.00

Other expense:

Factory expense	$88.18
Repairs	411.03
Government inspection overtime	135.91
Reicing cars	100.00
Loading & shipping	83.23
Advertising	190.93
Outside dravage	317.16
Telephone & telegraph	515.35
Stationery	200.00
Postage	89.98
Exchange	115.38
Refrigerator car rental	53.70
Legal expense	2.50

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Insurance	665.59	
Taxes	760.00	
Donations	9.00	
Provision for bad debt	357.54	
Provision for Ry. claims	24.98	
Misc'l expenses	844.90	
Outside storage	66.03	
Total other expense	5,031.39	
Total expense		43,676.43
Net profit		$3,979.14

340 **RESPONDENT'S EXHIBIT G.**

Wolff Packing Company, Topeka, Kansas.

Statement of Income & Expense.

Jan. 17, 1921, to Jan. 29, 1921, Inc.

Gross sales Jan. 17, 1921 to Jan. 29, 1921	$194,318.55	
Less freight, allowances, return goods and brokerage	12,327.84	
Net gross sales		$181,990.71
Cost of sales		134,382.33
Gross profit on sales		$47,608.38
Other income		47.18
Gross profit		$47,655.56

Expenses:

Pay roll, plant	13,484.45
Pay roll, salesmen	1,631.80
Pay roll, office	2,840.85
Supplies	2,613.81
Packages	3,952.76
Power	4,894.73
Salesmen, traveling expense	1,155.28
Bond interest	774.12
Other interest	1,802.01
Central office admin	1,320.86
Central office pay roll	694.67
Depreciation	3,188.00

LOSE IN CENTER

Other expense:

Factory expense	$88.18	
Repairs	411.03	
Government inspection overtime	135.91	
Reicing cars	100.00	
Loading & shipping	83.24	
Advertising	190.94	
Outside drayage	317.17	
Telephone and telegraph	515.35	
Stationery	200.00	
Postage	89.98	
Exchange	115.39	
Refrigerator car rental	53.70	
Legal expense	2.50	
Insurance	665.60	
Taxes	760.00	
Donations	9.00	
Provision for bad debt	357.54	
Provision for Ry. claims	24.99	
Misc'l expenses	844.90	
Outside storage	66.03	
Total other expense		5,031.45
Total expense		43,384.7
Net profit		$4,270.7

341 **RESPONDENT'S EXHIBIT D.**

Increase in Plant Pay Roll from Week Ending Jan. 22d to Apr 30, 1921.

Jan. 22.	Half Time	$313.84	
	New Pay Roll	6,929.41	
		7,243.25	
	Original Pay Roll	6,779.64	463.6
Jan. 29.	Half Time	330.84	
	New Pay Roll	6,841.43	
		7,172.27	
	Original Pay Roll	6,704.81	467.4
Feb. 5.	Half Time	330.66	
	New Pay Roll	7,155.17	
		7,485.83	
	Original Pay Roll	6,893.71	502.1

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Feb. 12.	Half Time	358.84	
	New Pay Roll	7,025.97	
		7,384.81	
	Original Pay Roll	6,865.16	
			519.65
Feb. 19.	Half Time	388.05	
	New Pay Roll	7,166.22	
		7,554.27	
	Original Pay Roll	6,991.23	
			563.04
Feb. 26.	Half Time	344.95	
	New Pay Roll	6,826.76	
		7,171.71	
	Original Pay Roll	6,659.16	
			512.55
Mar. 5.	Half Time	279.75	
	New Pay Roll	6,460.31	
		6,740.06	
	Original Pay	6,276.75	
			463.31
Mar. 12.	Half Time	265.80	
	New Pay Roll	6,416.98	
		6,682.78	
	Original Pay Roll	6,265.64	
			417.14
Mar. 19.	Half Time	163.89	
	New Pay Roll	5,840.35	
		6,004.24	
	Original Pay Roll	5,700.84	
			303.40
Mar. 26.	Half Time	165.43	
	New Pay Roll	6,148.71	
		6,314.14	
	Original Pay Roll	6,002.46	
			311.68
Apr. 2.	Half Time	194.05	
	New Pay Roll	5,994.32	
		6,188.37	
	Original Pay Roll	5,882.13	
			306.24
Apr. 9.	Half Time	232.29	
	New Pay Roll	6,369.42	
		6,601.71	

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	Original Pay Roll.....	6,209.83	
342			391.88
Apr. 16.	Half Time.....	321.25	
	New Pay Roll.....	6,957.07	
		7,278.32	
	Original Pay Roll.....	6,760.08	
			518.24
Apr. 23.	Half Time.....	321.67	
	New Pay Roll.....	6,903.28	
		7,224.95	
	Original Pay Roll.....	6,699.00	
			525.95
Apr. 30.	New Pay Roll.....	7,984.23	
	Original Pay Roll.....	7,150.82	
			833.41
	Total		7,099.68

343 Statement prepared showing the application of the rates fixed by the order of May 2, 1921, to the plant pay roll of the respondent company for the week ending April 30, 1921, and also for the week ending May 7, 1921.

As shown by the pay roll for the week ending April 30, 1921, the amount of wages actually paid by the company was $7,150.82. No overtime was paid. If the wages prescribed by the order of May 2, 1921, had been paid, the pay roll for the week ending April 30, 1921, would have amounted to $8,176.02, of which $682.38 would have been time and one-half for overtime.

A similar tabulation for the week ending May 7, 1921, shows that for that week the amount actually paid to such employees by the company was $6,819.22. The amount, at the prescribed rates, would have been $7,458.83 of which $359.55 would have been time and one-half for overtime.

Calculating overtime the time keeper used the rates fixed by the respondent company and not the rates prescribed by the order. Instead of multiplying the overtime by one-half the rate, the time keeper multiplied the hourly rate of wages by one half of the overtime.

A recapitulation of these figures shows:

Week ending April 30, 1921:

Wages Payable under rates prescribed by Industrial Court	$8,176.02
Wages actually paid.....	7,150.82
Increase	1,025.20

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Week ending May 7, 1921:

Wages payable under rates prescribed by Industrial Court	$7,458.83
Wages actually paid	6,819.22
Increase	639.61

344 Week ending April 30, 1921:

Wages payable under rate of Industrial court, excluding overtime	$7,493.64
Wages actually paid—no overtime	7,150.82
Wages in increase, exclusive of overtime	$342.82
Add increased wages due to overtime	682.38
Total increase	$1,025.20

Week ending May 7, 1921:

Wages payable under order of Industrial Court, including overtime	$7,099.28
Wages actually paid—no overtime	6,819.22
Increase in wages, exclusive of overtime	280.06
Add increased wages due to overtime	359.55
Total increase	639.61
Average increase in wages exclusive of overtime for the 2 weeks	311.44
Average of overtime for 2 weeks	$520.96
Average increase in plant pay rolls for 2 weeks under order of May 2, 1921	$832.40

345

EXHIBIT B.

Topeka, Kansas, Jan. 1, 1921.

1. The following wage agreement shall be effective as of January 1, 1921, ending January 1, 1922. Subject to change only by Judge Alschuler ruling on the Big Five Packers at Kansas City, Kansas.

(1) The principles of open shop shall apply.

(2) Employees shall receive wages per hour as shown in schedule one (1) hereto attached.

(3) Basic work day shall be eight hours.

(4) Guaranteed time shall be forty (40) hours per week at the rates set out in said schedule one (1), but this guarantee shall not include Sundays, Xmas, New Year, Memorial Day, Independence Day, Labor Day, nor Thanksgiving Day. Neither shall this guarantee cover loss of time over which the Company has no control.

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(5) Overtime at the rate of time and a half shall be paid after Eight ours—and for holidays named in Paragraph four (4).

(6) Starting time shall be set by the company and may be changed when considered advisable.

(7) Only such notices as have been approved by the Company may be posted and those only on bulletin boards provided for such purposes.

(8) Piece work rates shall be according to schedule two (2) attached hereto. Subject to change.

(9) The seniority shall prevail in all cases except where an employee is incompetent.

(10) The present Bonus system of five cents per hour, which is payable three times a year is hereby abandoned by substituting an increase of Four cents per hour on all rates in schedule one (1). Said increase to apply to all employees who have been employed two months or longer and to new employees after having worked two (2) Months.

(11) All Grievances must be taken up through the grievance Committee of the employees. The Company shall have ten (10) days in which to adjust difference. The Chas. Wolff Packing Company, by —— ——, President. —— ——, Superintendent.

346 Column 1, of this exhibit shows wages asked by the employees in the proposal submitted in January, 1921; Column 2, shows the wages fixed by the Packing Company following its Bulletin of January 17, 1921; and Column 3, shows wages excluding bonus under the contract of May 10, 1920.

347 **EXHIBIT C.**

SCHEDULE ONE (1).

Hog Killing Gang, Set for 225 per Hour.

No. men.	Position.	Rate. (1)	(2)	(3)
1.	Driver	.42½	.45	.42½
1.	Shackler	.50	.47½	.50
1.	Sticker	.60	.60	.60
1.	Drop Hogs	.43	.45	.43
2.	Tub Men	.45	.45	.45
1.	2nd Scalder	.47½	.45	.47½
1.	Scalder	.60	.60	.60
1.	Labor Scraping chin	..	..	..
1.	Hook on machine	.47½	.50	.47½
1.	Watch Out, Labor	..	..	..
1.	Trip Between Machine & Beef Tongue Trimmer.	.47½	.42½	.47½
1.	Trip from Polisher	..	..	..
1.	Cut Strings & Hang off	.50	.50	.50

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No. men.	Position.	Rate. (1)	(2)	(3)
1.	Shave Heads	.50	.45	.50
1.	Shave Tail & Hocks	.47½	..	.47½
2.	Shave Hams	.50	.52½	.50
2.	Shave sides & Backs	.60	.47½	.50
2.	Shave Shoulder	.50	.55	.50
1.	Feed Chain & Scrape hams	Labor.	.72½	..
1.	Put up roller	Labor.	..	..
1.	Shave Necks	.47½	.55	.47½
1.	Steam Heads & Shoulders	.45	.37½	.45
1.	Steam Flanks	.45	.35	.45
1.	Singe Heads	.42½	.42½	.42½
1.	Singe Hams	.42½	.37½	.42½
1.	Header	.60	.52½	.55
1.	Open Break Breast	..	..	.52½
348				
1.	Break Aitch, Drop Bungs	.72½	.60	.60
1.	Snatch Guts	.65	.55	.52½
1.	Switch out Ret. Hogs, Labor	..	..	..
1.	Splitter	.72½	.75	.60
1.	Split Necks	..	..	.52½
1.	Kidneys, Labor	..	..	..
1.	Cut out Bruises	.50 Cattle.	.72½	.50
1.	Face Hams	.55	.45	.50
1.	Pull Lard	.50	.40	.50
1.	Cut off Head, Labor	..	..	..
1.	Scrape Scrap Leaf, Labor.	..	..	..
1.	Wash Necks, Labor	..	..	..
1.	Punch Hogs, Labor	..	..	..
1.	Set Hogs, Labor	..	..	..
1.	Retaining Room	.60	.75	.60
1.	Spell Out	.60	..	.60
1.	Stamp	.45	.42½	.45
349	Trimming Department.			
	Cleaning Pig Feet	.60 per cwt.	.75	.60
	Bellie Trimming, Lean	.70 per cwt.	.70	.70
	Bellie Trimming, Extra Lean	.75 per cwt.	.75	.75
	Shoulder Trimming, Lean	.60 per cwt.	.60	.60
	Shoulder Trimming, Extra Lean	.75 per cwt.	.75	.75
	Ham Trimming, Lean	.65 per cwt.	.65	.65

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No. men.	Position.	Rate. (1)	(2)	(3)
	Ham Trimming, Extra Lean	.75 per cwt.	.75	.75
	Neck Bones, Lean	.85 per cwt.	.85	.85
	Pig Tails Trimmings, Lean.	1.50 per cwt.	1.50	1.50
	On Ham Basis Now.			
	(Ham Skinned & Gatted	.03½ each)	..	.03½
	(Reg. Skinned Hams	.04 each)	..	.04
	(Skinned Picnics	.03½ each)	..	.03½
			One man boner.	
	(Reg. Picnic	.04 each)	.52½	.04
	(Press Hams	.45 hour)	..	.45
	(Sausage Cooker (all round) 50 hour)	..	..	.50
350	Hog Cutting, Set for 225 per Hour.			
	Push hogs, labor:			
1.	Stamp	.45	.35	.45
1.	Cut Down	.42½	.37½	.42½
2.	Block Hogs	.45	.40 & .45	.45
1.	Chopper	.60	.50	.60
2.	Bone Shoulder	.50	.60	.50
3.	Trim. Saw Shoulder	.60	.45	.52½
1.	Trim. Jowls	.42½	.45	.42½
1.	Pull Butts	.50	.45	.45
1.	Trim. Plates	.42½	..	.42½
1.	Pass Sides	.42½	.40	.42½
2.	Loin Pullers	.60	.47½–.52½	.52½
2.	Loin Trimmer (out)	.42½	..	.42½
2.	Ribber & Split Sides	.60	.55	.55
1.	Grade Bellies (out)	.45	..	.45
3.	Trim. Bqt. & Cap. Bellies.	.52½	.55 & .60	.52½
1.	Trim. D. S. Bellies (out).	.45	.45	.45
2.	Comb. with Scribers Loin Pullers	.50	..	.50
1.	Saw Hams	.50	.45	.50
1.	Cut off Hams	.50	.45	.50
1.	Trim. Picnics	.60	.52½	..
2.	Ham Trimming	.65	.60	..
351	Hog Casing & Offal, Set for 225 per Hour, Average.			
1.	Pull Hog Bungs & Wash.	.50	.45	.50
1.	Blow Hog Bungs, Grade Turn & Insp	.52½	.50	.52½

COPY BOUND CLOS

No. men.	Position.	Rate. (1)	(2)	(3)
1	Trim. Bungs	.52½	.50	.52½
2	Pull Small Guts and Tie.	.52½	.47½	.52½
2	Pull Black Guts	.45	.45	.45
1	Pull Ruffle Fat & Wash Hearts & Liver	.50	.45	.50
1	Stripper	.45	.47½	.45
1	Trucker, Labor	..	..	..
1	Hang Livers, Hearts, Etc., Labor	..	..	..
1	Pack Casings & Salt	.47½	.47½	.47½
1	Trim. Pounches, Wash and Rip Stomachs	.45	.45	.45
1	Trim. Plucks	.47½	.47½	.47½
1	Trim. Stomachs Melts	.45	.45	.45
1	Trim. Giblet Meat	45	.52	.45
1	Pepsin Trimmer	.50	.30	..
52	Hog Head, Set for 225 per Hour, Average.			
1	Temple & Skin Heads	.52½	.52½	.52½
1	Chiseling & Break. Jaws.	.50	.40	.50
1	Trim. Jaw Bones	.45	Elim.	.45
2	Cheeking, $.60 per cwt.	.52½	.60	.52½
1	Snouter	.50	.50	.50
1	Tonguer	.50	.65	.50
1	Brain Machine, Labor	..	..	..
1	Ethmoid Mch., Labor	..	..	..
1	Re-Shaver	.47½	.52½	.47½
1	Take Out Snout Meat (out)	.45	..	.45
	Cattle Killing, Set for 12 per Hour, Average.			
1	Pen, Knock, Shackle & Hang Off & Return Shackle	.47½	.45	.47½
1	Sticker, Tongue & Head & Extra	.57½	.50	.57½
1	Drop Cattle, Pritch Up, Skin Feet, Rip Open, Break Legs	.73½	.72½	.72½
1	Floorsman	.75	.75	.75
1	Pull Caul, Saw Breast Aitch. Bone Hoist, Raise Gullets	.60	.55	.50
1	Cut Fells & Drop Hides	.57½	.60	.57½
1	Rumpers & Backer, Trim. Bruises	.72½	.72½	.72½

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No. men.	Position.	Rate. (1)	(2)	(3)
1.	Cut Off, Pull Tails & Wash Shanks	.42½	Elim.	.42½
1.	Splitter & Gut Cattle	.75	.75	.75
1.	Hang Off & Clean Floor, Labor	..	..	..
1.	Saw Tails Split Chucks	.55	.55	.55
1.	Scribe Switch Cattle	.47½	.47½	.47½
2.	Washer, Labor	..	..	..
1.	Pin Up Neck, Push In cooler	.42½	.40	.42½
1.	Set Up Cattle Pin Up Scorer Etc.	.45	..	.45
353	Beef Casing & Rough Tallow.			
2.	Trim. Pounch, Liver, Hearts, Etc.	.47½	.45	.47½
1.	Wash. Tripe	.50	.45	.50
1.	Scald Tripe & Finish Tripe	.47½	.45	.47½
1.	Finish Tripe	.47½	..	.47½
1.	Trimming All Fat	.47½	.47½	.47½
1.	Trim. Gullets, Bladder Pizzle	.45	..	.45
1.	Trim. All Heads	.50	.47½	.50
1.	Run Guts, Pull Ruffle, Cut out Bungs	.52½	.47½	.52½
1.	Strip Rounds & Turn Rounds	.47½	.45	.47½
1.	Bung Gut Fatter & Fat Middles	.57½	.50	.57½
1.	Trim. Middles & Bungs & Slimes	.47½	.50	.47½
1.	Measure & Salt Bungs & Middles	.47½	.50	.47½
	Smoke House.			
..	Inspector	.45	..	.45
..	Stringer	.42½	.42½	.42½
..	Tieing	.42½	.40	.42½
..	Girls, .25 to 30	.25 to	.30–.35	.25 to .30

All other work, regular Labor.

Janitors, Watchmen Elevator & Door Men to be paid according to work and ability.

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All Watchmen, Temperature men and smokehouse Watchmen shall Receive the minimum wage of forty cents (40) per hour.
(Column 3.) Janitors, Watchmen, Elevator and Door men to be paid according to work and ability.

Dry Salt and Sweet Pickle.

No. men.	Position.	Rate. (1)	(2)	(3)
	Pilers	.44	.42½	.44
	Man in Charge	.55	.44	..
	Pumpers	.47½	.42½	.44
638.	Overhaulers	.44	.42½	.44
	Man in Charge	.55	.44	..
	Truckers	.44	.40	.44
	Pullers	.44	.44	.44
	Chute Men	.44	.42½	.44
	Inspector	.47½	.37½ & .44	.47½
639.	Fast Evevator	.45	.42½	.45

Mechanical Department.

	Machinist	.75	.70	.70
	Asst. Machinist	.55	..	.55
	Machinist Helper	.45	.45	.45
	Steam Fitters	.62½ to .70	.55	.62½ to .70
	Steamfitter Helper	.45	.42½	.45
	Tinner	.60	.55	.55
	Millwright, Hog Machine	.47½	.60	.47½
	Oiler Belts & Hog Machine	.55	.55	.55
	Carpenters	.62½ & .55	.52½ & .55	.62½ to .55
	Carpenter H-lper	.45	..	.45
	All Electric Work	.75	.60	.70
	Electric Helpers	.45	.45	.45
	Blacksmiths	.65	.60	.60
	Blacksmith Helpers	.45	.45	.45
	Mason Work	.50	.60	.50
	Ice Pullers	.45	.42½	.45
	Oilers	.47½	.47½	.47½
	Engineer	.60 & .57½	.60	.60 & .57½
	Boiler Washer, Etc., 1st Oiler	.52½	.47½	.47½
	Firemen	.57½	.50–.55	.57½
	Painter, Finisher, and Mixer	.70	..	..
55	Beef Cooler	..	..	..
	Calf Skinner	.47½	4.00 Day.	.47½

CLOSE IN CENTER

No. men.	Position.	Rate. (1)	(2)	(3)
	Beef Cuts	.47½	4.00 Day.	.47½
	Sackers	.45	4.00 Day.	.45
	Helpers (out)	.42½	.....	.42½
	Truck Drivers	4.25	4.00	4.25
	Fresh Pork Department.			
	Loin Wrappers	.42½	.37½	.42½
	Pack & Scale Loins	.45	.40	.45
	Nailers, Labor	..	..	..
	Pack Fresh Meat	.45	.40	.45
	Scale Fresh Meat	.45	25.00 Week.	.45
	City Sales Y Shipping.			
	A. T. Rowe	....	....	4.00
	Alexander	4.25	4.00	4.25
	All other men according to class and amount of labor turned out	....	....	....
	General Packing Department.			
	Scalers & Packers	.45	30.00 to 32.50 Week.	.45
	Miscellaneous.			
	Common Labor for men	.40	.37½	.40
	Common Labor for Boys. According to class of work.	..	..	..
356	**Casing Cellar.**			
	Girls	.25 to .33	.27½ to .33	.25 to .33
	Lard Department.			
1.	Running Rolls & Filling Package	.50	.50	.50
1.	Helper	.42½	.40	.42½
1.	Helper	.45	.37½	.45
	Tank House.			
1.	Tank Filler	.47½	.45	.47½
1.	Press Man	.42½	.42½	.42½
1.	Press Man	.45	.40	.45
1.	Bone Sawer	.45	.40	.45
1.	Helper	.42½	.42½	.42½
..	Laborers	.40	.40	.40

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Cooperage.

No. men.	Position.	Rate. (1)	(2)	(3)
1.	Cooper	27.50	27.50 Week.	27.50

Engineer.

See Mail Dept.

	Neidens After Sept. 1st, 1920 to receive	.60	.60	.60

Store Room.

1.	Girl	.30	.33	.30
1.	Girl	.27½	..	.27½

Sausage Department.

1.	Mixer Man	.42½	27.50 Week.	.42½
1.	Chopper	.42½	.40	.42½
1.	Baker & Smoker	.47½	.47½	.47½
1.	Baker & Smoke Helper	.42½	.40	.42½
1.	Feeding Grinder	.42½	..	.42½
1.	Stuffer	(.35)	.27½ to .33	.50
1.	Table Girls	.27½ to .33	Same.	.27½ to .33
1.	Cook Hams	.45	.42½	.45

Produce Department.

Egg Candler, crt	.30 to .33	.30	..
Egg Candler, Unert	.27	..	..
Egg Candler for lady	.37½	..	..
Man in charge of cooler	27.50	25.00	..
Laborers	.45	....	..

Boiler Room.

Head Fireman	.57½	.55	..
2 Fireman	.52½	.50	..
Coal Rustler	.45 & .50	.42	..
Boiler Washer, See Mail Dept.	.50	.47½	..

Elevator Men.

East Elevator, See Dsosp. Dept.	.45	.42½	..
Tank Room & Killing Room.	.42½	.42½	..
All Others	.40	.40	..

LOSE IN CENTER

All Engineers }
All Firemen } Five (5) cents over old Schedule after six (6
All Oilers } months' Service.

The present Bonus system of five cents per hour, which is pay-
able three times a year is hereby abandoned by substituting an in-
crease of Four cents per hour on all rates in schedule One (1)
Said increase to apply to all employees who have been employed tw
— or longer, and to new employees after having worked two (2
Months.

358	G. Manning	.45 Hr.
	B. Kline, Sr.	.42½
	E. Carver	.45
	H. Kerr	.42½
	B. Kline, Jr.	.35
	Lacenberry	.55
	Franklin	25.00 Week
	V. Scheer	.55 Hr.
	L. J. Newman	.47½
	C. E. Robins	.45
	E. Austin	.45
	Coke	.45
	H. Barber,	.55
	J. Asteen	.55
	W. Humbert	.45
	T. Kelly	.45
	R. S. Murray	.44
	A. A. Rodgers	.44
	O. J. Smith	.44
	W. Barber	.44

359 **LIVE STOCK SLAUGHTERED.**

Period ending—	Cattle.	Calves.	Sheep.	Hogs.	Total k... hog bas...
Dec. 4, 1920	806	189	83	11,043	13,6...
Jan. 1, 1921	445	87	56	10,297	11,8...
Jan. 29, 1921	750	92	104	11,188	13,4...
Feb. 26, 1921	679	139	86	11,867	14,0...
Mar. 26, 1921	583	147	13	6,519	8,3...
Apr. 30, 1921	990	204	54	11,732	14,8...

Approximate Basis.

3 Calves—2 Bullocks.
4 Sheep—1 "
1 Bullock—2.7 Hogs.

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EXHIBIT X-1.

Detailed Statement of Assets and Liabilities, December 31, 1914.

Resources.		Liabilities.	
Bills receivable.....	62,867.32	Capital Paid up.....	358.300.00
Real Estate and Buildings	177,499.31	Surplus	0.00
Personal Property.....	118,191.40	Undivided profits.....	362,232.87
Stocks, bonds and other securities	21,550.00	Bills payable.....	196,500.00
Merchandise	426,391.42	Accounts payable.....	15,721.56
Cash on hand.....	1,340.67	Bonded indebtedness.....	0.00
Due from banks.....	30,258.93	Encumbrances on Real Estate or plant.....	0.00
Accounts Receivable....	94,655.38	Bills rediscounted.....	0.00
Judgments	0.00		
Total	932,754.43	Total	932,754.43

361

EXHIBIT X-2.

Detailed Statement of Assets and Liabilities, December 31, 1915.

Resources.		Liabilities.	
Bills receivable.....	108,525.32	Capital paid up.....	358,300.00
Real estate.....	185,082.39	Surplus	00.00
Personal Property.....	108,999.04	Undivided profits.....	353,023.96
Stocks, bonds and other securities	19,520.00	Bills payable.....	163,850.00
Merchandise Inv. 12-31-15.	339,874.83	Accounts payable.....	31,096.89
Cash on hand.....	913.56	Bonded indebtedness.....	00.00
Due from banks.....	37,134.24	Encumbrance on real Estate or plant.....	00.00
Accounts receivable.....	106,221.47	Bills rediscounted.....	00.00
Judgments	0.00		
Total	906.270.85	Total	906,270.85

362

EXHIBIT X-3.

Detailed Statement of Assets and Liabilities, December 31, 1916.

Resources.		Liabilities.	
Bills Receivable.....	74,747.53	Capital paid up.....	358,300.00
Real estate.....	194,736.98	Surplus	0.00
Personal property.....	120,303.32	Undivided profits.....	399,030.00
Stocks, bonds and other securities	21,720.00	Bills payable.....	190,050.00
Merchandise Inventory 12/31/16	515,238.61	Accounts payable.....	30,906.20
Cash on hand.....	1,639.63	Bonded indebtedness.....	0.00
Due from banks.....	0.00	Encumbrance on real estate or plant.....	0.00
Accounts receivable.....	108,072.29	Bills rediscounted.....	0.00
Judgments	0.00	Due Banks, overdraft....	58,172.16
Total	1,036,458.36	Total	1,036,458.36

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363 **EXHIBIT X-4.**

Detailed Statement of Assets & Liabilities, December 31, 1917.

Resources.		Liabilities.	
Bills receivable.....	1,523.86	Capital paid up.....	358,300.00
Real estate.....	265,166.21	Surplus and undivided profits	261,539.15
Personal property.....	107,191.96	Bills payable.....	593,898.30
Stocks, bonds and other securities	24,820.00	Accounts payable.....	14,726.00
Merchandise, inventory 12/31/17	705,637.43	Bonded indebtedness.....	0.00
Cash on hand.....	8,734.91	Encumbrance on real estate or plant.....	0.00
Due from banks.....	0.00	Bills rediscounted.....	.....
Accounts receivable.....	144,626.08	Due bank, overdraft.....	29,237.00
Judgments	0.00		
	1,257,700.45		1,257,700.45

364 **EXHIBIT X-5.**

Detailed Statement of Assets & Liabilities, December 31, 1918.

Resources.		Liabilities.	
Bills receivable.....	195.57	Capital paid up.....	358,300.00
Real estate and buildings.	271,243.44	Surplus and undivided...	178,876.00
Personal property.....	124,259.39	Bills payable.....	544,100.00
Stocks, bonds and other securities	21,947.60	Accounts payable.....	44,306.37
Merchandise	570,185.63	Bonded indebtedness.....	.....
Cash on hand.....	926.90	Encumbrance on real real estate or plant....	.....
Due from banks.....	11,122.07	Bills rediscounted.....	.....
Accounts receivable.....	125,700.77		
Judgments	.....		
	1,125,581.37		1,125,581.37

365 **EXHIBIT X-6.**

Detailed Statement of Assets & Liabilities, December 31, 1919.

Resources.		Liabilities.	
Bills receivable.....	516.54	Capital paid up.....	600,000.00
Real estate.....	362,303.33	Surplus and undivided profits	80,427.92
Personal property.....	160,976.62	Bills payable.....	155,500.00
Stocks, bonds and other securities	46,230.00	Accounts payable.....	512,059.00
Merchandise	614,759.71	Bonded indebtedness.....	0.00
Cash on hand.....	84.29	Encumbrance on real estate or plant.....	0.00
Due from banks.....	24,360.69	Bills rediscounted.....	.....
Accounts receivable.....	158,438.74	Reserve for taxes.....	15,900.00
Judgments	.....	" " depreciation.	3,783.00
	1,367,669.92		1,367,669.92

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366 **EXHIBIT X-7 AS AMENDED.**

Detailed Statement of Assets & Liabilities, December 31, 1920.

Resources.		Liabilities.	
Bill- receivable.....	924.19	Capital paid up.....	600,000.00
Real estate.....	1,063,116.13	Surplus	.....
Personal property.....	659,943.67	Undivided profits.....	.....
Stocks, bonds and other securities	7,402.00	Bills payable.....	.....
Merchandise	401,425.39	Accounts payable.....	1,270,886.64
Cash on hand.....	00.00	Bonded indebtedness.....	.....
Due from banks.....	20,409.84	Encumbrance on real estate or plant.....	.....
Accounts receivable.....	158,980.95	Bills rediscounted.....	.....
Judgments	.....	Res. for taxs.....	9,876.88
Prepaid insurance.....	2,916.35	" " Compensation....	1,451.25
		" " Depreciation.....	423,903.75
Total	2,315,118.52	Total	2,315,118.52

367 The foregoing constitutes a transcript of the record as stipulated by the parties, subject to the right of either party to designate additional parts of the record not included herein at any time prior to sixty days before the argument, and have the same printed under the provisions of Rule 10 of the United States Supreme Court. D. R. Hite, Attorney for plaintiff-in-error. Richard J. Hopkins, Atty. Genl. of State of Kansas, John G. Sean, Asst. Atty. Genl. of State of Kansas, Baxter R. McClain, Randal C. Harvey, Attorneys for defendant-in-error. John S. Dean, Harry N. Colmeery, James E. Smith, of counsel. Chester I. Long, of counsel.

368 **CERTIFICATE.**

STATE OF KANSAS, *ss:*

Supreme Court.

I, D. A. Valentine, Clerk of the Supreme Court of the State of Kansas hereby certify that the foregoing is a full, true, correct and complete transcript of the record and proceedings had in the Case of the Court of Industrial Relations, Plaintiff vs. The Chas. Wolff Packing Company, Defendant, No. 23702, as agreed to by Stipulation of the parties, hereto, and of the opinions filed in said case, as the same appear on file and of record in my office as Clerk of the Supreme Court of the State of Kansas.

In witness whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at my office in the city of Topeka, this 13th day of December, A. D. 1922. [Seal Supreme Court, State of Kansas.] D. A. Valentine, Clerk of the Supreme Court of the State of Kansas.

369 And thereupon on the 10th day of July, 1922, the said defendant filed in said Supreme Court its petition for a writ of error together with assignments of error, as follows:

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370 [Title omitted.]

PETITION FOR WRIT OF ERROR.

[Filed July 10, 1922.]

Considering itself aggrieved by the final decision of the Supreme Court of the State of Kansas in rendering judgment against it in the above entitled cause on the 10th day of June 1922, the said defendant, the Chas. Wolff Packing Company, hereby prays a writ of error from the said decision and judgment to the Supreme Court of the United States. The said defendant in error herewith presents its assignment of errors upon which it will rely for a reversal of the said decision and judgment. John S. Dean, Harry N. Colmery, D. R. Hite, Attorney- for the Chas. Wolff Packing Company.

STATE OF KANSAS, *ss:*

Supreme Court.

Let the writ of error issue upon the execution of bond by the said defendant in error the Chas. Wolff Packing Company in the sum of $50,000.00 Dollars; said bond when approved to act as a supersedeas. W. A. Johnston, Chief Justice of the Supreme Court of Kansas.

371 [Endorsement omitted.]

372 [Title omitted.]

THE CHAS. WOLFF PACKING COMPANY'S ASSIGNMENT OF ERROR.

[Filed July 10, 1922.]

The said Chas. Wolff Packing Company, with its petition for a writ of error, presents the following assignments of error in the rulings and decisions of the Supreme Court of the State of Kansas, in the above entitled cause:

1. Said court erred in holding and deciding that the provisions of the act of the State of Kansas creating the Court of Industrial Relations (Chapter 29 of the Laws of Kansas Enacted at the Special Session of 1920), as applied to this defendant in the matter of regulating its management and control of its property and authorizing the Court of Industrial Relations of the State of Kansas to prescribe the wages to be paid by the defendant to its employes, and the time and conditions of their employment, do not deprive this defendant of its liberty and property without due process of law, or deny to said company the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

373 2. Said court erred in holding and deciding that the operations of this defendant and the wages paid by it to its em-

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ployes are affected with a public interest and subject to regulations prescribed by the Court of Industrial Relations, notwithstanding the claims and contentions of this defendant that in so holding and deciding said statute, as applied to this defendant, deprived it of its property without due process of law, and denied to it the equal protection of the laws, in violation of said amendment.

3. Said court erred in holding and deciding that the orders made by the Court of Industrial Relations, shown upon the record, regulating the business and operations of this defendant by prescribing an increase of wages to be paid to its employes, and the time and conditions of their employment, did not deprive said company of its property without due process of law, or deny to it the equal protection of the laws in violation of said amendment.

4. Said court erred in entering an order and judgment compelling this defendant to pay increased wages to its employes, notwithstanding the defendant was and had been operating its property at a loss, and was not and had not received a fair rate of return upon its investment; because, said order and judgment, if enforced, would deprive this defendant of its property without due process of law, and deny to this defendant the equal protection of the laws, in violation of said amendment.

5. Said statute and said orders of said Court of Industrial Relations, as interpreted in the rulings and decisions of said court, amount to an arbitrary and unjust discrimination against this defendant as an employer, arbitrarily and unjustly placing the defendant in a class different from other employers of labor similarly situated, and placing burdens and obligations upon this defendant, as a member of such class, different and more onerous than those placed upon other employers similarly situated, thereby denying to this defendant the equal protection of the laws, in violation of said amendment.

374 6. That generally said court erred in entering orders, decisions and judgments the effect of which is to deprive this defendant of its property without due process of law, and deny to the defendant the equal protection of the laws, in violation of said amendment.

7. Said court erred in entering judgment holding valid and enforcing the following paragraphs of the order of the Court of Industrial Relations, dated May 2, 1921, to-wit: Paragraphs 2, 3, 4, 9, 11, 14, 15, 17, 18 and 19, and commanding this defendant to obey said paragraphs of said order notwithstanding the objections of this defendant that the enforcement of said paragraphs of such order deprived or would deprive this defendant of its property without due process of law, and deny to this defendant the equal protection of the laws in violation of said fourteenth amendment.

8. Said court erred in holding valid the provisions of section 3, of chapter 29, of the Laws of 1920, creating the Court of Industrial Relations, prescribing that certain industries named in said section were affected with a public interest and subject to regulation and control by the Court of Industrial Relations, notwithstanding the objec-

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tion of this defendant that said section deprived this defendant of its property without due process of law, and denied to this defendant the equal protection of the laws in violation of said fourteenth amendment.

This defendant presents the foregoing assignments of error in the rulings and decisions of the Supreme Court of the State of Kansas and prays that such disposition may be made thereof as may be in accordance with the laws of the United States in such cases made and provided. This defendant most respectfully prays that for said errors, the rulings, decisions and final judgments of the Supreme Court of Kansas, in the above entitled cause, be reversed, and that a judgment be entered by the Supreme Court of the United
375 States that the statute creating said Court of Industrial Relations, as applied to this defendant in said rulings, decisions, orders and judgments, deprives it of its property without due process of law, and denies to it the equal protection of the laws, and that the rulings, decisions, orders and judgments attempting to regulate the business, property and affairs of this defendant be declared void because in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States. John S. Dean, Harry W. Colmery, D. R. Hite, Attorneys for said defendant The Chas. Wolff Packing Company.

376 [Endorsement omitted.]

377 And thereupon, pursuant to the order of said Chief Justice allowing said writ of error, the defendant in error duly filed in said Supreme Court its bond in the sum of $50,000.00 to act as supersedeas, as follows:

378 [Caption omitted.]

BOND.

Know all men by these presents, That we the Chas. Wolff Packing Company, a Kansas Corporation, as principal, and National Surety Company of New York as surety, are held and firmly bound unto the Court of Industrial Relations in the sum of $50,000.00, to be paid to said Court of Industrial Relations, to which payment well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Signed and sealed with our hands and seals and dated this 15th day of July, 1922.

Whereas, the above named plaintiff in error seeks to prosecute a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Kansas.

Now therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer to defendant in error and those represented by

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it for all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect. The Chas. Wolff Packing Company, by D. R. Hite, National Surety Company of New York, Surety, by Carl W. Nellis, Attorney in Fact.

The above bond is approved. W. A. Johnston, Chief Justice of the State of Kansas.

379 [Title omitted.]

WRIT OF ERROR.

[Filed July 11, 1922.]

UNITED STATES OF AMERICA:

The President of the United States to the Supreme Court of the State of Kansas:

Because, in the records and proceedings, as also the rendition of a judgment in a plea which is in the said Supreme Court of Kansas, before you, at the June 1922 sitting of the January 1922 term thereof, between the Court of Industrial Relations, plaintiff, vs. The Chas. Wolff Packing Company, defendant, a manifest error hath happened to the great damage of the said defendant, the Chas. Wolff Packing Company, as by its complaint appears.

We being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the United States Supreme Court, together with this writ, so that you have the said record and proceedings aforesaid at the City of Washington, D. C. and filed in the office of the Clerk of the United States Supreme Court, on or before thirty days from the date hereof, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

380 Witness, the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this July 10, 1922.

Done in the City of Topeka with the seal of the District Court of the United States for the District of Kansas, attached. [Seal of District Court U. S., District of Kansas.] F. L. Campbell, Clerk of the United States District Court for the District of Kansas.

Allowed: W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

381 [Endorsement omitted.]

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382 And thereupon said writ of error was duly allowed by the Chief Justice of said Supreme Court and a citation duly issued and service thereof duly acknowledged, which citation was as follows:

383 [Title omitted.]

CITATION AND SERVICE.

[Filed July 11, 1922.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Court of Industrial Relations of the State of Kansas, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of Kansas, wherein the Chas. Wolff Packing Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Kansas, this July 10, 1922. W. A. Johnston, Chief Justice of the Supreme Court of Kansas. Attest: [Seal of Supreme Court, State of Kansas.] D. A. Valentine, Clerk of the Supreme Court of Kansas.

I, Randal C. Harvey, attorney of record for the defendant in error in the above entitled case hereby acknowledge due
384 service of the above citation, and enter the appearance of the Court of Industrial Relations of the State of Kansas, the above named defendant in error in the Supreme Court of the United States.

Dated Topeka, Kansas, this July 11th 1922. Randal C. Harvey, Attorney for the Court of Industrial Relations of the State of Kansas.

385 [Endorsement omitted.]

385½ STATE OF KANSAS, *ss:*

Supreme Court.

I, D. A. Valentine Clerk of the Supreme Court of the State of Kansas do hereby certify that the foregoing are the,—

Original Petition for a Writ of Error together with the allowance thereof, fixing the amount of the bond for appeal at Fifty Thousand Dollars,

The Original Assignments of error,

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The Original Writ of Error,

The Original Citation, together with the acknowledgment thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court of the State of Kansas, in the City of Topeka, this 13th day of December, A. D. 1922. [Seal of Supreme Court, State of Kansas.] D. A. Valentine, Clerk of the Supreme Court of the State of Kansas.

386 STATE OF KANSAS, *ss:*

Supreme Court.

I, D. A. Valentine, Clerk of the Supreme Court of the State of Kansas do hereby certify that there was lodged with me as such clerk, on July 10, 1922, in the above entitled cause:

1. The Original Bond for Appeal of which a copy is herein set forth, and,

2. Two copies of the Writ of Error as herein set forth, one for the Defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court of the State of Kansas, in the City of Topeka, this 13th day of December, A. D. 1922. [Seal Supreme Court, State of Kansas.] D. A. Valentine, Clerk of the Supreme Court of the State of Kansas.

387 UNITED STATES OF AMERICA, *ss:*

Supreme Court of Kansas.

In obedience to the commands of this writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Kansas in the City of Topeka, this 13th day of December, A. D. 1922. [Seal Supreme Court, State of Kansas.] D. A. Valentine, Clerk of the Supreme Court of the State of Kansas.

Endorsed on cover: File No. 29,289. Kansas Supreme Court. Term No. 739. Chas. Wolff Packing Company, plaintiff in error, vs. Court of Industrial Relations of the State of Kansas. Filed December 16th, 1922. File No. 29,289.

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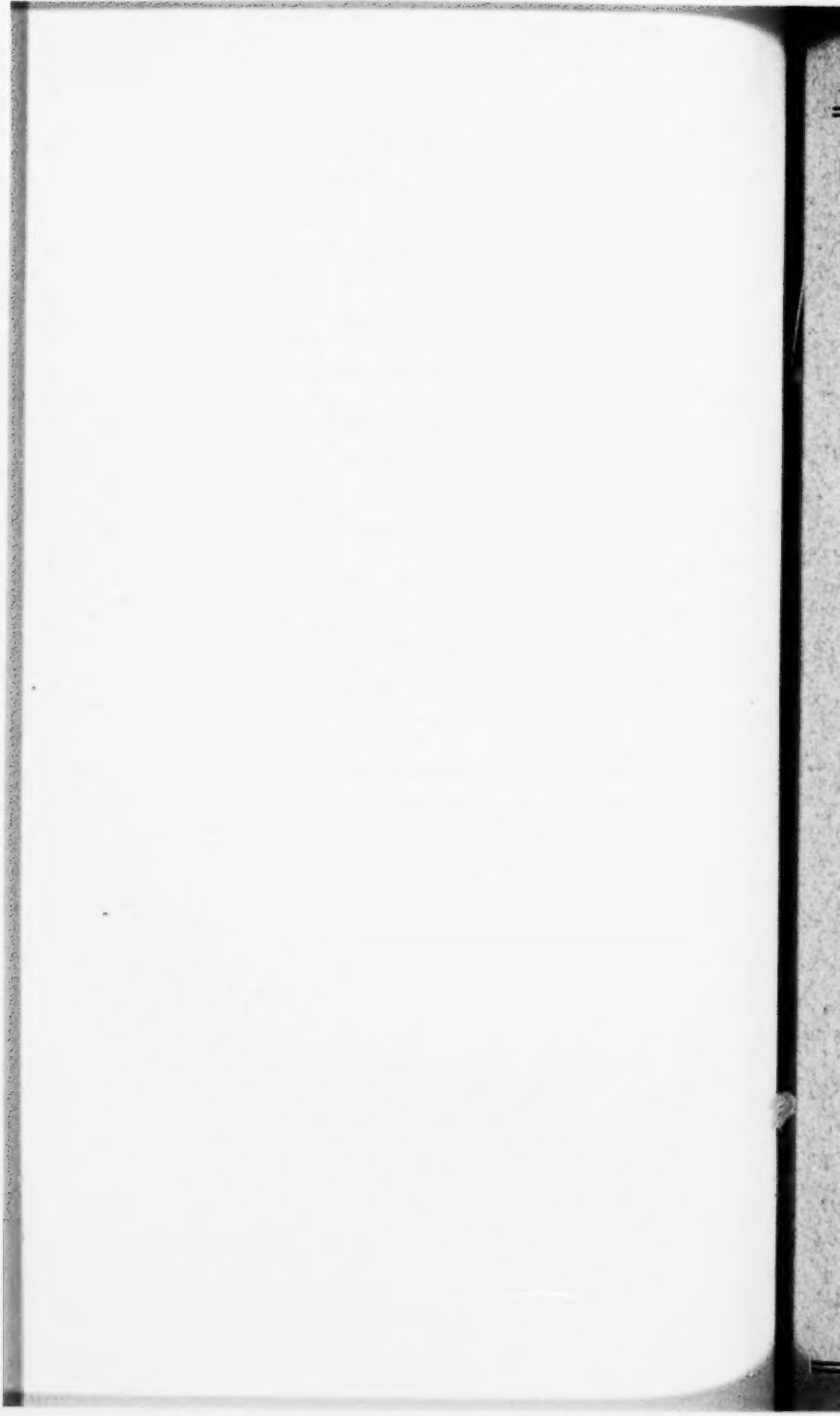

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WM. R. STAN

IN THE

Supreme Court of the United States.

October Term, 1922.

No. 739

THE CHAS. WOLFF PACKING COMPANY,
Plaintiff-in-Error,

vs.

COURT OF INDUSTRIAL RELATIONS OF THE STATE OF KANSAS, Defendant-in-Error.

ERROR FROM THE SUPREME COURT OF THE STATE OF KANSAS.

Statement, Brief and Argument of the Plaintiff-in-Error.

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This order was made after a hearing in March, 1921, upon a complaint filed in the Industrial Court by representatives of a local meat cutters union, employed by the company, that the packing company had reduced wages, increased hours of work, and refused to renew a contract with the union which expired January 1, 1921.

The order provides (Tr. 21-22) for a basic working day of eight hours to be observed in the packing company's plant, but that "A nine hour day may be observed not to exceed two days in any one week without penalty; providing, however, that if the working hours of the week shall exceed forty-eight in number, all over forty-eight shall be paid for at the rate of time and one-half; furthermore, in case a day in excess of the eight hour day shall be observed more than two days in one week all over eight hours, except for said two days in said week, shall be paid for at the rate of time and one-half, even though the working hours of the week may be forty-eight or fewer."

It also provides: "That sufficient work shall be offered to the regular employes in each and every month so that the monthly earnings of the regular workers will be sufficient to constitute a fair wage under the Kansas Industrial Law, as heretofore defined by this Court."

It also provides, that women workers shall receive the same wages as men engaged in the same class and kind of work; that piece work shall be paid in accordance with the piece work schedule set out as a part of the order; and that plant employes paid by the week shall be subject to hours of work and overtime as other employes under the terms of the order fixing the basic day. It further pre-

scribes a schedule of minimum wages to be paid by the packing company to employes engaged in the occupations specified in the schedule. This schedule lists each station, employment or job, with the hourly wage scale to be paid therefor, separating and classifying the stations, employments, or jobs, by departments, of which there are twenty-four. The effect of this schedule of minimum wages and hours of work, is hereafter stated.

The packing company refusing to observe this order, the Industrial Court began an original action of mandamus in the Kansas Supreme Court, in which an alternative writ issued.

To this alternative writ the packing company filed its return (Tr. 23-30), admitting that it refused to obey the order and claiming that the statute creating the industrial court and defining its powers, as interpreted and administered in this order, deprived the packing company of its property without due process of law and denied the equal protection of the laws in violation of the fourteenth amendment to the Federal Constitution.

This return was treated as raising issues of law and fact. The issues of law were first tried, and determined against the packing company, the Kansas Supreme Court holding: (Tr. 30.)

> "That the act establishing the Court of Industrial Relations operates on both employer and employee.
>
> That the wages paid employees in a packing house is a matter of public concern and the determination of the sufficiency of such wages is a question affected by the public interest.
>
> And, that the law does not violate any provision of

the Fourteenth Amendment to the Constitution of the United States."

A commissioner was appointed to take testimony and make findings of fact and conclusions of law upon the issues of fact. Afterwards, pending the report of the commissioner, the Kansas Supreme Court filed an opinion (Tr. 32-47) in which it gave the reasons and grounds for the above memorandum decision, which will be considered in a review of the several decisions involving the statute and this order.

The issues of fact referred to the commissioner tendered in the packing company's answer or return were: (Tr. 23-30.)

(1) That no fact or circumstance existed justifying the complaint, hearing or order, as the company then, before and since was operating its property with employes satisfied to work for the wages offered.

(2) That the hours and conditions of labor prescribed in the order were impracticable in the circumstances in which the packing company must operate.

(3) That the effect of the order was to increase the company's operating expenses, more than $40,000.00 per year; that the company had sustained and was sustaining losses due to economic conditions over which it had no control, and compliance with the order inevitably would increase such losses, confiscate its property and transfer it to the employes mentioned in the order.

A hearing was had before the commissioner in July, 1921. The evidence taken and reported by him is ab-

stracted in the transcript (Tr. 47-118). It established the following facts:

The Company's Plant Operations.

The packing company is a Kansas corporation, organized in 1886, operating a packing house in Topeka, Kansas, and employing about 300 persons as "plant employees," about one-half doing work as "common labor." (Tr. 56, 57.) Until January, 1919, its paid up capital stock amounted to $385,300.00 and in that month was increased to $600,000.00. Its plant has a weekly capacity of about 4500 hogs and 300 cattle. The company's products are sold throughout the United States and in foreign countries. The percentage of its sales in Kansas is small, the larger percentage of sales being in other states and countries. (Tr. 153.) It is necessary that live stock should be slaughtered promptly following its receipt to avoid loss from disease, deterioration in quality of the product, and loss in weight from shrinkage. The operations in the plant from slaughter to refrigeration are continuous to comply with governmental regulation and avoid loss. The killing equipment is adequate for 250 to 350 hogs per hour, but the refrigeration and curing capacity is insufficient to permit continuous killing at this rate. Accordingly, plant employees to the number of 50 or 60 in the "Killing gang" cannot be kept at this work for eight hours every day. Because of conditions the company's control of live stock offerings is limited and when live stock is brought to the plant it must be taken (Tr. 17, 121,

155) and slaughtered as quickly as possible, so that when there is an excess it is frequently necessary for the "Killing gang" to work more than eight or nine hours continuously. At other times the killing can be done in much less than eight hours (Commrs. finding No. 5, Tr. 121), and a basic eight hour day is impracticable (Tr. 79, 116). When live stock on hand is slaughtered within working hours and the refrigerating capacity exhausted the men are transferred to other work, generally such as can be done by common labor, but are paid at the regular wages for skilled knifemen. Owing to the size of the plant, such employees could not be kept if their wages were reduced when doing common labor. They must be and are paid the wages of skilled labor, during the whole time employed, in order to retain them. (Tr. 121.)

The Value of the Company's Property and Its Operating Losses for 1918, 1919 and 1920.

The company's plant, situated at Topeka, was appraised by the American Appraisal Company in 1919 at $1,225,000.00 after depreciation. (Tr. 56, 315.) Its value, according to the testimony, is about $1,000,000.00. (Tr. 56). The sales for 1920 were about $7,500,000.00. The company's practice is to close its books for the purpose of ascertaining profit and loss at the end of each six months. Its fiscal year ends October 30th. It is necessary for the company to borrow considerable money to carry on its operations. During the time covered by the investigation before the

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industrial court and the commissioner the interest rates for money was eight per cent per annum.

The income of the company for each of the years 1918, 1919 and 1920 was less than the cost of raw material and the expense of manufacturing. (Tr. 55). Its loss for the six months from October 30, 1920, to April 30, 1921, amounted to $155,359.48. (Exhibit "E," Tr. 242-243). The net loss for the twelve months period ending October 30, 1920, was $179,353.85. (Tr. 227-228). The net loss for the period from November 1, 1920, to January 15, 1921, was $91,481.06. (Tr. 239-240). The net loss for the period from January 17, 1921, to April 30, 1921, was $63,878.42.

For the five weeks period ending April 30, 1921, the net loss was $10,565.26. During the six months period ending April 30, 1921, the company's plant pay roll, directly affected by the order in question, amounted to $177,966.73. During the same period the gross receipts from sales, less the value of raw material, was $404,451.56 During a part of the time from October 30, 1920, to May 2, 1921, the date of the order in question, the plant was operated under a wage agreement with the local union which expired December 31, 1920. The remainder of the time, from January 17, 1921, to April 30, 1921, it was operated under wages fixed by the Company January 15, 1921. If the rates fixed by the order of May 2, 1921, had been in force during the period from the time this notice was posted to the time the order in question was made, the plant pay roll would have been increased $7,099.68 (Commissioner's finding No. 7, Tr. 122), or, from $97,930.24 to $105,030.94. As stated

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above, the actual loss at the wages paid according to the company's schedule was $63,878.00. This loss included an item of $23,970.00 depreciation, $12,562 central office administrative expense, $5,805.90 the share of bond interest approportioned to the Topeka property and $5,452.77, the Topeka plant's proportion of central office pay roll. In making his report of the losses sustained by the company the amount of depreciation charged off was not allowed by the commissioner. He also disregarded the items of central office administrative expense, bond interest and central office pay roll, finding the loss from January 17 to April 30, 1921, $24,116.94. He also reduced the amount of the loss for the twelve months period ending October 30, 1920, for the same reasons, to $39,948.23, and the loss from October 30, 1920, to April 30, 1921, to $86,462.50, dividing the last sum mentioned between the two periods as follows: Loss from November 1, 1920, to January 17, 1921, $63,805.54; loss from January 17, 1920, to April 30, 1921, $24,116.94. (See Commissioner's Finding No. 9, Tr. 124, and Exhibits "B," "E," Tr. 239-240, 241, 242, 243, 244 also Exhibit "G", Tr. 245.)

Effect of the Industrial Court's Order on the Company's Operating Expenses.

As to the effect of the order in question upon the packing company's operating expenses, the commissioner found (Tr. 122):

> "Taking the period from January 17th to April 30th, 1921, as a basis of computation, the effect of the Court's order of May 2nd, 1921, would be to increase

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the amount of the respondent's pay roll for that period over the amount it actually did pay its workers affected by the order by the sum of $7,099.68, or an average of $2,028.48 per month, or $24,341.76 per annum if the period would represent the average operations for the year. This would amount to an increase in the pay roll of the plant of 7 2-10 per cent, of which rate of increase 4 8-10 per cent would be caused by the provision for a basic day and extra pay for overtime, and only 2 4-10 per cent by the increase of the direct wage scale. It is evident, however, that during the period in question the plant has not been operated to its full capacity. The total sales during the year ending October 30th, 1920, were $7,440,725, while those for the subsequent six months, expiring April 30th, 1921, were only $2,282,736. The capacity of the plant reduced to a hog killing basis is 5,000 hogs per week, whereas only about 2,800 per week was the average for the six months' period."

See also upon this point the testimony of Wagner, the company's time-keeper, Tr. 96, 97, and his computation, Exhibit "D," Tr. 246 to 248.

As to the ultimate effect of the order of May 2, 1921, the commissioner in his Conclusion of Law No. 4 said (Tr. 130):

"As to those paragraphs of the order of May 2nd, numbered 3, 11, 14, 15, 17 and 19, directly affecting the wages to be paid workers, the effect of the order of the Court of Industrial Relations, as found by the facts, would necessarily be to increase the loss at which the respondent's plant had been and was being operated at the time when the complaint was filed and the order was made, and to the small extent of the increase ordered in the pay roll, would place the capital invested in the stock of the respondent corporation farther from receiving any return to the owners. The tendency of the enforcement of the order would therefore be to deprive the stockholders of that much property and to hasten the ultimate closing of the

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plant, which is inevitable unless business or operating conditions can be improved."

He further said (Tr. 131):

"There is nothing in the act justifying the taking of property of the employer in one of the designated industries for the purpose of enabling the workmen to receive a fairer wage, any more than the taking of fair wages from the workmen to enable the employer to earn a fairer return on his invested capital. The object of the law is evidently to prevent an unfair and lop-sided condition, and beyond that there is no intention evident to change the operation of the law of supply and demand, either as to the price of labor or product, and in the regulation aimed at the interest of the public in having the industry continuously operated and its output produced and placed on the market is made paramount. If the respondent were making a substantial return on its investment in operating this plant, although not a fair one considering the going interest rates at the times, and were not paying fair wages to its workmen, the situation would be one for the industrial court to equalize in the interest of the general publlic, but, where, as in this case, the respondent is getting no return whatever on its investment, and the workers are receiving wages, not as high as are paid in the larger packing houses, but equal to those paid a year before when the cost of living was somewhat higher, an increase is not justified nor authorized by the industrial court law and the execution of those paragraphs of the order would be unreasonable and should not be enforced."

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There Is No Evidence or Finding that the Controversey Heard by the Industrial Court Threatened Strife, Disorder, Waste or Shortage of Food Supply.

Upon the issue whether the facts justified the industrial court's interference and order, the commissioner said: (Tr. 129.)

> "It is contended by the respondent that at the time the Industrial Court entertained the complaint and ordered a hearing thereon, there was no such controversy between the parties as may have affected the continuity or efficiency of the packing industry so as to endanger the public peace or threaten the public health, and that consequently the jurisdictional condition did not exist which could authorize the investigation by the court.
>
> The Law, Section 7 of the industrial court act, makes that a matter to be determined by the discretion of the court as a preliminary requisite to assuming jurisdiction to enter upon the investigation, and provided that the hearing having been entered upon and brought to a conclusion, the court shall make and serve its findings. It is not contemplated by the law that the seriousness of the controversy, that is, the jurisdictional condition, should be an issue to be tried at the hearing.
>
> The end and purpose of the law seems to be primarily the protection of the general public from the results of controversies arising between employers and employes and if jurisdiction of the court could not be assumed until strikes or shut-outs had occurred, or other overt acts had been committed imminently threatening the public peace or if the question of the soundness of the courts discretion in entertaining the complaint and ordering the investigation were a matter of judicial review in the light of subsequent conditions which the purpose of the law is to improve, the ends and aims of the law and its efficiency would be seriously impaired if not entirely defeated.

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It is concluded, therefore, that the industrial court was justified in acting upon the knowledge of its members of general as well as local industrial conditions, however acquired, as well as ex-parte information on the subject of the particular strife and controversy, in assuming its jurisdiction in this case, and in as much as the good faith of the members of the court is not questioned, the subject is not open to review in this proceeding."

The facts claimed to justify this interference and order are as follows:

The Packing Company's Operations Have Not Been Interrupted by Labor Troubles Since Its Incorporation, Except for Five or Six Weeks During 1918 When There Was a Partial Strike.

Except for a period of 5 or 6 weeks in 1918, when there was a strike of about 175 out of 300 plant employes, the company's operations have not been interrupted by labor troubles since it began business (Tr. 56). During this strike period in 1918 the plant did not shut down but was not operated to full capacity (Tr. 56). The management has had no complaint from its employes, aside from the trouble just mentioned, between 1918 and the filing of the complaint in the industrial court.

Mr. Wolff, president of the company, testified: (Tr. 56.)

"I do not recall a single employee that quit the service of the company on the ground of not getting pay enough. There has been absolutely no difficulty as to the company being able to go on with its business upon the payment of wages

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it is now paying. We have more applicants than jobs and did have this morning. That has been practically the situation since the beginning of 1921. We have absolutely no difficulty whatever in getting all the employes that we require for the operation of the plant at the wages offered by the plant. About thirty men inside the dock looking for positions this morning."

See upon this point the testimony of Chas. Wolff, Jr., Tr. 56; Superintendent Sheehan, Tr. 77, and of the three plant foremen, Bratton, Laverty and Brandon, Tr. 116 and 117.

During a part of 1920 the company had an agreement with the local butchers union fixing the wages and hours of work of plant employes. This contract expired December 31, 1920. (Tr. 7.) Upon its expiration the union demanded a renewal, submitting a new contract covering the year 1921 substantially the same as the one which had expired. To this proposal the packing company replied that it could not renew the contract because the plant was operating at a loss and suggested a conference, which the union declined, and finally served an ultimatum on the company that the new contract must be signed and certain contentions of the union as to the interpretation of the bonus clause in the expired contract conceded. Before the expiration of the time limited the packing company posted a notice to its employes that they should consult their foremen for new rates of pay that would be effective beginning January 17, 1921, and that from that date overtime would not be paid except at the regular rates per hour. Thereupon, the local union held a meeting and a

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resolution to strike was considered; but, finally the union authorized its officers to file the complaint in the industrial court. (Commrs. finding No. 4.) (Tr. 120.) Upon these facts, the packing company contended that no emergency existed within the meaning of the act, and the industrial court could not acquire jurisdiction to make the order. This contention was denied.

The commissioner concluded as a matter of law, that a peremptory writ of mandamus should not be allowed (Tr. 131); but the Kansas Supreme Court held that although the order increased the company's operating expenses, at a time when it was doing business at a loss, and without any return to its owners, the industrial court statute required the payment to its employees of "a living wage" as prescribed by the industrial court, and directed a peremptory writ of mandamus to issue requiring the packing company to observe the order as to wages, hours and conditions of labor. (Tr. 144-156.)

From this decision the packing company prosecutes this writ, having secured a supersedeas, staying the writ, pending a review in this Court.

For the convenience of the Court, Ch. 29, Laws 1920, creating the industrial court, is printed as an appendix.

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Specifications of Error.

(1) The Kansas Supreme Court erroneously decided the issues of law tendered by the Packing Company's objection to the sufficiency of the alternative writ of mandamus in deciding:

(a) That the act creating the Court of Industrial Relations operates on both employer and employee.

(b) That the wages paid employees in a packing house is a matter of public concern and the determination of the sufficiency of such wages is a question affected by the public interest.

(c) That the law creating the Court of Industrial Relations does not violate any provision of the Fourteenth Amendment to the Constitution of the United States.

(2) The court erred in holding valid the Industrial Court order of May 2, 1921, notwithstanding the effect of such order would be to compel the Packing Company to pay increased wages to its employees, when it was operating its business at a loss which would be increased by complying with the order.

(3) The court erred in overruling the claims of the Packing Company that the order of May 2, 1921, was invalid because it deprived the Packing Company of its property without due process of law, and denied the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution.

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Points and Authorities.

The Industrial Court Act is an Emergency Statute:

State v. Howat, 109 Kan. 376.

See also decisions in this case

Act Establishing the Industrial Court Considered and Interpreted by the Kansas Supreme Court:

State ex. rel., Court of Industrial Relations v. Howat, 107 Kan. 423.

State ex. rel., Hopkins v. Howat, 109 Kan. 376.

Court of Industrial Relations v. Chas. Wolff Packing Company, 109 Kan. 629.

Court of Industrial Relations v. Chas. Wolff Packing Company, 111 Kan. 501.

The Statute Does Not Operate Alike Upon Employers and Employees in the Designated Industries.

Sections 12, 17, Ch. 29, Laws 1920.

Lochner v. New York, 198 U. S. 45.

State v. Howat, 109 Kan. 376.

Wages Paid by Employers Operating Packing Houses are Not Affected with a Public Interest or Subject to Regulation by the State.

State v. Howat, 109 Kan. 376.

Howard v. Schwartz, 77 Kan. 599.

Munn v. Illinois, 94 U. S. 113.

Interstate Commerce Commission v. C. & G. Ry. Co., 209 U. S. 108, 118.

Northern Pacific Ry. Co., v. North Dakota, 236 U. S. 585, 595.

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Southern Pacific Company v. Interstate Commerce Commission, 219 U. S. 433, 444.

Brooks—Scanlon Co., v. Ry. Comm., 251 U. S. 396.

Fort Scott Ry. Co., v. Mills, 253 U. S. 223.

Wilson V. New, 243 U. S. 332, is Not Authority for Upholding the Industrial Court Statute:

Wilson v. New, 243 U. S. 332.

Lochner v. New York, 198 U. S. 45.

Railway Co., v. Mills, 253 U. S. 223.

The Industrial Court Order Contains Provisions in Excess of the Constitutional Power Possessed by or That Can Be Conferred Upon Any Tribunal in This Country by Any Act of Legislation:

Sections 7, 8, Ch. 29, Laws 1920.

Allgeyer v. Louisiana, 165 U. S. 578.

Lochner v. New York, 198 U. S. 45.

Adair v. U. S., 208 U. S. 161.

Coppage v. Kan., 236 U. S. 1.

Truax v. Raich, 239 U. S. 33.

Prudential Insurance Company v. Cheek, 17 U. S. Adv. Opinions, p. 626.

Smyth v. Ames, 169 U. S. 527, 528.

Hairston v. Danville & Western Ry. Co., 208 U. S. 606.

Mugler v. Kansas, 123 U. S. 661.

St. Louis Ry. Co., v. Arkansas, 235 U. S. 350, 362.

People v. Jackson & Mich. Plank Road Co., 9 Mich. 285, 307.

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Cooley's Constitutional Limitations, 7th ed., p. 838.

Brick Company, v. Perry, 69 Kan. 300.

Howard v. Schwartz, 77 Kan. 609.

Order of the Industrial Court is Void Because It Increases the Operating Expenses of the Packing Company Against Its Will, Notwithstanding the Income of the Company Was and is Insufficient to Pay the Costs of Raw Material and Operating Expenses, Including Wages to Employes Affected by Such Order:

Reagan v. Farmers Loan & Trust Co., 154 U. S. 362, 410.

Railway Company v. Mills, 253 U. S. 223.

Pa. Coal Company v. Mahon, 43 S. C. Rep. 158 (Adv. sheet, Vol. 43, No. 5, January, 15, 1923.)

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BRIEF AND ARGUMENT.

The Kansas Statute and Decisions.

Chapter 29 of the Laws of 1920 was enacted at a special session of the Kansas Legislature, called in January, 1920, to deal with an emergency which is graphically described in the opinion of the Kansas Supreme Court, delivered by Mr. Justice Burch in State vs. Howat, 109 Kan. 376. After relating the effects of the strike, inaugurated by the national coal miners union, resulting in a shortage of fuel all over the country, the opinion thus states the emergency conditions under which this statute was enacted:

> "In the winter of 1919-'20, the purposes of the national strike were attempted to be carried out in District No. 14. The threatened consequences were so dire that the state took action in this court, under the anti-trust statute, and the court appointed receivers for the coal mines. The receivers encountered difficulty in securing competent managing operators, because those who were familiar with the mines and methods of coal production in that district feared they might not survive an attempt to supply the people of the state with fuel. With splendid heroism, exservice men, college students, and others of patriotic mold, volunteered to do the work. Prudence demanded they be given military protection, and a regiment of the Kansas National Guard was sent with them to the mines. General Wood also stationed a troop of regular army soldiers in the vicinity. On the way to Pittsburg, movement of the state troop train was insufferably delayed, until a sharp order to proceed was given. Then the train was wrecked. After the volunteers and their military escort arrived at Pittsburg some sniping occurred, but without fatality, some mining machinery was disabled, and some hidden stores of dynamite were discovered. The determined character of the coal-producing enterprise seems then to have been appreciated,

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> pay a living wage to their employees, notwithstanding the fact that the plant is being operated at a loss. An industry of any kind that cannot be operated except at the sacrifice of its employees ought to quit business. An industry ought not be permitted to recoup its losses out of the wages of its employees where those employees are in such a condition that they cannot prevent it. It may be argued that a laboring man can quit at any time and go elsewhere. So far as the law is concerned, this is true—he has an absolute right to go and seek work in some other place; but actually, and in fact, it is often impossible for a working man to quit the work in which he is engaged and readily find other work. Economic conditions are such that, most of the time, when a working man finds himself out of work, he must remain out of work for days, weeks, and months, during which time he and his family suffer. Many a working man cannot quit when he desires so to do. He must continue to work, although his wages are not sufficient to properly feed and clothe himself and his family and educate his children."

In this connection the language of paragraph four of the order (Tr. 21), approved by the Kansas Supreme Court, is of special significance. This paragraph reads:

> "No guarranty of time per week is specifically ordered; but sufficient work shall be offered to the regular employes in each and every month so that the monthly earnings of regular workers will be sufficient to constitute a fair wage under the Kansas Industrial Law, *as heretofore defined by this court.*"

The definition of a "fair wage" previously had been given by the industrial court in the matter of the complaint of the line-men of the Topeka Edison Company, Court of Industrial Relations, docket No. 3254, a part of the public records of the state. This definition and order reads as follows:

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> "Such persons (referring to workers) in all fairness are entitled to a wage which will enable them to provide for themselves and their families all the necessities and a reasonable share of the comforts of life. They are entitled to a wage which will enable them by industry and economy, not only to support themselves with opportunity for intellectual advancement and reasonable recreation, but also to enable the parents working together to furnish to the children ample opportunity for intelligent and moral advancement, for education, and for an equal opportunity in the race of life. The fair wage will also allow the frugal man to provide reasonably for sickness and old age."

The Dissenting Opinion.

In the dissenting opinion delivered by Mr. Justice Burch, with whom concurred Mr. Justice Porter, (T. 151-157) it is said that the record does not disclose facts sufficient to justify the industrial court in taking cognizance of the complaint filed by the local union. The interpretation of the statute requiring the existence of such facts is stated as follows:

> "Until a controversy between the employer and employes engaged in operating a packing house brings within reasonable contemplation a discomforting shortage of food which the defendant produces, public interest does not attach to the conduct of its business and the powers conferred by the statute are not called into action."

It results that the Kansas Supreme Court has interpreted this statute to mean that the rights of employes in a packing house to "a living wage", as defined by the industrial court, are paramount to the rights of owners of the packing house to a fair return upon their investment;

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that the public interest of the state requires that such employes should receive compensation such as to enable them to live in the manner defined by the industrial court and that the burden of sustaining this public obligation may be cast upon the individual employers in the designated industries. This is the conclusion of the Kansas Supreme Court which surpasses in importance all other questions involved in this writ of error.

If it is sustained as to employers of labor engaged in the specified industries, it means that the public burden is not distributed among employers generally, but is confined to those who employ labor in the production of food, clothing and fuel.

The Statute Does Not Operate Alike Upon Employers and Employes in the Designated Industries:

Sec. 7 apparently authorizes a proceeding in the Supreme Court by either party to a controversy contemplated by its provisions to compel obedience to orders of the Industrial Court. But, Sec. 17 provides: "Nothing in the Act shall be construed as restraining the right of any individuel employee engaged in the operation of any such industrial employment, public utility or common carrier, to quit his employment at any time." Relative to the right of the employe at any time to leave his employment in these industries the Kansas Supreme Court, in the State v. Howat, 109 Kan. 376, said: "The statute expressly guards the privilege of an employe to quit his employment at any time. He may quit before controversy

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arises, when controversy arises, while controversy is raging, and after controversy has been adjusted."

It appears from the above quoted sections of the statute and the opinion of the Supreme Court interpreting them, that no compulsory order can be made to compel an employe to observe an order made by the Industrial Court. It is equally clear from the record in this case that the Kansas Supreme Court asserts the State's right to compel an employer to observe orders which the employe, although directly affected by such orders, is at liberty to disregard. In other words, orders prescribing wages, hours and conditions of labor in these industries prescribed by the Industrial Court under this statute have no real efficacy as to employes and act only in restraining the employer. By such orders the employer may be compelled to pay the prescribed wages and conform to the hours and conditions of labor, but the employe, although he may have been a complainant in a proceeding in which such orders are made, may disregard them. In all of the cases considering the rights of employers and employes the rule is as stated by this court in Lochner v. New York, 198 U. S. 45, that the constitutional guaranty of freedom of contract applies alike to the employer and the employe. As this statute is a restraint upon the employer alone, so far as compulsory process to compel obedience to the orders of this legislative tribunal, it is concluded that it does not operate equally upon the employer and employe, and that no valid ground exists for the conclusion of the Supreme Court expressed in its memorandum decision of

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July 11, 1921, (T. 30) that the act operates on both employer and employe.

The only reference in the opinion of October 9, 1921, (Tr. 37) to this difference in the operation of the act is a quotation from Sec. 17, to the effect that employes may not conspire to quit their employment for the purpose of suspending the operation of any of the enumerated industries. Just how this section meets the objection which the packing company urges to the statute is not apparent. Sec. 17 is a criminal statute designed to punish conspiracy to damage or injure the property of another. The point the packing company urges is that this statute denies the equal protection of the law to employers by putting them in a class which is deprived of the freedom of contract with reference to wages, hours and conditions of labor previously enjoyed, whilst leaving to employes their constitutional liberty of contract.

Wages Paid by Employers Operating Packing Houses are Not Affected with a Public Interest or Subject to Regulation by the State.

In the opinion of the Court in Howat's case, 109 Kan. 376, the Kansas Court is committed to the doctrine that the packing house business is subject to regulation as provided in the industrial court act. This rule is expressed as follows:

"The mills of Kansas stand today 'at the gateway of commerce' more prominently than did private elevators forty-five years ago. Great packing plants belonging to what the Federal Trade Commission calls the 'Big Five'

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are located in Kansas. Many similar packing companies operate plants within the state, and the meat packing industry effectually dominates not only a food supply, but one of the great industries of the state—the live-stock industry. There are other reasons for regulation, which need not be specific because the issues in this case involve production of fuel only; but the manufacture of food products is mentioned to show the precarious ground on which the state stands in respect to its supply of the necessities of life in case of emergency."

It should be observed that this is contrary to the ruling of the same court in Howard vs. Schwartz, 77 Kan. 599, deciding that flour mills are not "affected with a public interest."

In both decisions in this case (Tr. 31, 40, 41, 144, 150) the rule that packing houses are affected with a public interest and subject to state regulation is approved; and it is held that this regulation may consist in legislative orders fixing wages, hours and conditions of labor of those employed in packing houses.

The major premise of the argument that wages, hours and conditions of labor of employes in a packing house may be regulated is that packing house owners have devoted their property to a public use because they are engaged in the preparation of food, a necessity of life. Support for the ruling that the regulation of this industry may include fixing wages, hours and conditions of labor is claimed to be found in the decisions of this court in Munn v. Illinois, 94 U. S. 113, and subsequent cases following the principle of that case. Counsel for the packing company believe that this conclusion involves an erroneous

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conception of the cases upon which the principle is claimed to rest. What was the case decided in Munn v. Illinois?

Certain private owners of elevators in Chicago had increased their business until great quantities of grain from the western country passed through their elevators. Charges for storing and handling this grain was their source of income. Illinois enacted a statute that persons desiring to avail themselves of the service offered by this property and its operation could not lawfully be required to pay more than certain charges fixed by the statute. This statute regulated the business of handling grain by fixing the charges which the owner of the property engaged in such business should charge the public for the use of such property. It was determined that this was a proper exercise of legislative power because the business was affected with a public interest; that the public was in a situation where it was for its benefit to use this property; that it did use it; and that the owners lawfully could not charge the public more than a reasonable sum for such service. The statute acted upon the income of the owner of the property. Depending upon the extent which the public might use the property this statute fixed the amount of the owner's income from its use. The subsequent cases, including those largely quoted in Howat's case, add nothing to the law upon this subject. Munn v. Illinois is the foundation upon which all of them rest. Modifications of the rule are to be found in the cases holding that the admitted power to regulate property affected with a public interest must stop before compelling the owner to operate the property at a loss; because, con-

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stitutionally, he is entitled to a fair return upon his investment.

The orders in this case are not directed to charges to be made by the owner of this packing plant for its use by the public, they are directed to fixing charges its employes shall be entitled to make for their labor. They are not directed to the service which the industry shall render to the public. They do not act upon what the owner shall receive, but what some one else—the employes—shall receive. This legislation is the opposite of that considered in the Munn case. The statute in that case regulated rates and charges to be paid by the public to the industry. The public interest consisted in not being unreasonably burdened. It—the public—claimed and was accorded the right to use the property in consideration of a reasonable compensation for such use to be paid by the public to the owner. The owner claimed and was accorded the right to receive for such use a reasonable compensation. This legislation asserts the right to regulate the wages a workman shall receive for services rendered—not to the public—to another individual. In the Munn case the public bought the public service; in this case the owner buys the private service. In the Munn case the public remained a voluntary buyer of such public service. It was at liberty to use or not to use it. The present law seeks not only to compel the workman to sell his services at the rate or price fixed by law to private employers, but attempts to compel private employers in the designated industries to pay such fixed prices. It goes further than a statute which fixed the price a public utility

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should charge for its service and compelled private individuals to purchase such service at the price fixed. In principle it is the same as a statute fixing the price of bacon and hams owned by this packing company and by mandamus compelling certain designated classes of persons to purchase such bacon and hams and pay the packing company the statutory price. These considerations convince that it is impossible to find cases more unlike in their facts and principles than those regulating certain industries affected with a public interest by prescribing the charges to the public for using their facilities, and a case involving fixing wages and hours and conditions of labor, and compelling employers to pay and employes to accept such wages and conditions.

Those who advocate such legislation as the Industrial Court statute must seek support for their theories elsewhere than in the cases of which Munn v. Illinois is the prototype.

Although not pursued consistently, or to its logical result, the theory is advanced in the argument of the Kansas Supreme Court that the public interest in packing houses requires "continuity of operation" because it is essential to public welfare that the food supply of the people shall not be interrupted; that controversies involving wages so frequently have resulted in strikes, lockouts, etc., at the expense of the public supply of necessities; that the state has the power which it has exercised in the enactment of this statute to adopt such means as in the opinion of the legislature will prevent such inconvenience.

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It seems, therefore, that the Kansas Supreme Court is of the opinion that the legislature has the power to compel owners of private property, adapted to the preparation of food, to use such property continuously in the public interest, and, that if the owner cannot agree with employes engaged in such industry as to wages, hours and conditions of labor, the state has the power to prescribe fair and reasonable wages, thus removing the ground of the controversy and the possible cause of interruption to the supply of a necessity. The chief obstacle in the way of this theory, in practice, lies in the constitutional right of the owner of private property adapted to the preparation of food to discontinue using it for that purpose and cease producing food, and, in the constitutional right of the employe engaged in such industry to withdraw therefrom and devote his time to other pursuits. The Kansas Supreme Court does not deny the right of the employes to withdraw from the occupation of preparing food, but it does deny the right of the owners of the property to cease operating if by so doing the public shall suffer inconvenience. This theory fails to take into account the absolute right of the owner of private property to withdraw it from a use in which the public has an interest. This is partially recognized in the Kansas decisions but, in effect, they hold that, so long as such owner does engage in the preparation of food, he must submit to state regulation of wages, hours and conditions of work in the operation of his property. And that the public interest in the continued operation of his property includes the requirement that the owner pay such compensation to his employes as

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will enable them to live in a manner defined by law. In its final decision the Kansas court has carried this theory to its last extremity by announcing that packing house owners who cannot so manage their affairs as to pay such compensation for the services of their employes should go out of business. (Tr. 150.) In its essense this ruling declares that the Kansas legislature has the power to impose as a condition of carrying on the packing house business in that state that the owner of the property shall pay such wages and observe such hours and conditions of labor in the operations of his plant as the industrial court may prescribe.

Unless it can be said that when the owner of such property devotes it to the preparation of food he voluntarily assumes the public obligation of paying such wages and observing such hours and conditions of labor as may be prescribed by this legislative tribunal, there is no foundation whatever for the doctrine that wages of employes in such an industry are affected with a public interest and subject to public regulation. It is believed that the law does not, and cannot, impose any such obligation upon the owners of private property. When the Chas. Wolff Packing Company was incorporated it engaged to transact the business of preparing live stock for human food. It was no part of its engagement that it would pay such wages to its employes as the court should prescribe. But it is said (Tr. 150, 151):

"Public welfare demands that all industries that provide food, clothing, fuel and transportation shall continue to operate because without their operation suffering must re-

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sult; but public welfare likewise demands that a working man engaged in the production of the things that minister to the comfort of all must be paid such compensation for his services as will enable him to live in the manner prescribed in the Court of Industrial Relations Act."

As we have seen, the effect of the decision is to impose the public obligation of paying such compensation upon the packing company; and, necessarily includes the imposition of a like condition upon all persons who engage in the industries covered by the statute. This means that natural persons engaged in the preparation of food, clothing and the production of coal carry on their production subject to the condition that the wages, hours and conditions of labor of their employes shall conform to the rules prescribed from time to time by the Kansas legislature; and that unless such legislative orders are observed, they must discontinue their several occupations. It necessarily results, also, that when the owner of property devotes it to the preparation of food or clothing, or the production of coal, at the same time he devotes it to the payment of compensation to those whom he shall employ sufficient for them to live in the manner prescribed by the industrial act.

No American legislature has the power to impose such conditions upon the pursuit by the citizens of this country of any of these occupations. In the case of Interstate Commerce Commission vs. C. & G. Ry. Co., 209 U. S. 108, 118, it is said:

> "It must be remembered that railroads are the private property of their owners; that when from the public character of the work in which they are en-

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gaged the public has the power to prescribe rules for securing faithful and efficient service and equality between the shipper and community, yet in no sense is the public a general manager."

In Northern Pac. Ry. Co. vs. North Dakota, 236 U. S. 585, 595, it is said:

"But broad as is the power of regulation, the state does not enjoy the freedom of an owner. The fact that the property is devoted to a public use on certain terms does not justify the requirement that it shall be devoted to other public purposes, or to the same use on other terms, or the imposition of restrictions that are not reasonably concerned with the proper conduct of the business according to the undertaking which the carrier has expressly or impliedly assumed."

In Southern Pac. Co. vs. Interstate Commerce Commission, 219 U. S. 433, 444, with reference to the power of the commission not merely to fix rates but also to regulate and control the general policy of the owners of railroads as to fixing rates, it is said:

"A power which if obtained would open a vast field for the exercise of discretion, to the destruction of rights of private property in railroads, and would in effect assert public ownership, without any of the responsibilities which ownership would imply."

In Brook Scanlon Co. vs. RR. Commission, 251, U. S. 396, the Louisiana Railway Commission attempted to compel the operation of a line of railroad which was being operated at a loss. This court said:

"If the plaintiff be taken to have granted to the public an interest in the use of the railroad, it may withdraw the grant when that use can be kept up only at a loss. The principle is illustrated by the many

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cases in which the constitutionality of a rate is shown to depend upon whether it yields to the parties concerned a fair return."

In Ft. Smith RR. Co. vs. Mills, 253 U. S., 223, the receiver of an insolvent railroad was threatened with prosecution under the Adamson law for his refusal to observe the wages, hours and conditions of labor prescribed by that act. He filed a bill in equity to enjoin the government from enforcing the penalties of the statute on the ground that he was operating the property at a loss and that the employes of the road were satisfied with the wages he was able to pay. This court sustained the injunction, stating that the Adamson Act was enacted in haste to meet an emergency and that Congress could not require a railroad to continue in business at a loss, citing Brook Scanlon Co. vs. RR. Commission, 251 U. S. 396. It was held also that it was not decided in Wilson vs. New that there might not be circumstances in which the Adamson Act could not be applied consistently with the fifth amendment or that the act in spite of its universal language, must not be construed to reach every carrier or railroad subject to the act regulating commerce.

It must be concluded, therefore, both upon reason and authority that the doctrine of "continuity of operation" of private property engaged in the preparation of food and clothing and the production of fuel cannot be sustained upon reason or authority; nor can the public obligation of securing an adequate living to the people, if there be such a public obligation, be transferred from the public

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to the private owners of property engaged in the industries classified by this statute.

Wilson vs. New, 243 U. S. 332.

The Kansas Supreme Court states that although Lochner v. New York, 198 U. S. 45, has not been expressly overruled, the decision in that case is opposed by the decision of this court in Wilson v. New, supra; and, that the decision of this court in that case sustaining what is known as the Adamson Act is authority for the conclusion that the Act creating the Industrial Court is not subject to constitutional objection. There are several answers to this argument. This court has expressly confined the decision in Wilson v. New to the emergency which called the Adamson Act into existence. In the subsequent case of Fort Scott Railway Company v. Mills, 253 U. S. 206, the limits of the decision in Wilson v. New are stated. In a later case it was pointed out that the Adamson Act "avowedly was enacted in haste to meet an emergency, and the general language necessary to satisfy the demands of the men need not be taken to mean further than the emergency required or to have been intended to make trouble rather than to allay it." (RR. Co. vs. Mills, 253 U. S. 223.)

In the present case, although the Kansas Supreme Court holds that the circumstances disclosed by the record were sufficient to justify the exercise of the emergency jurisdiction conferred upon the Industrial Court, the facts as stated by the Supreme Court and established by the record, show merely the dissatisfaction of a group of packing

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house employees at the wages, hours and conditions of labor under which they were employed. The fact that the Packing Company was ready, able and willing to go on with its enterprise with the labor requisite to operate its property, at wages satisfactory to the persons employed, removes this case from any possible application of the so-called emergency rule. It is impossible to believe that this court would have sustained an order of the interstate commerce commission, assuming that it was granted power to regulate wages in the manner provided in the Adamson Act, if the carrier upon which the regulation was imposed showed that it was able to carry on its business and perform its public functions and pay wages less than those prescribed in the statute. Indeed, this is the situation presented to this court in Fort Scott Railway Company v. Mills, supra, in which a bill of equity brought by the receiver of an insolvent railway company was sustained on the ground that the undisputed facts showed the ability of the carrier to go on at wages satisfactory to the receiver and his employes.

As well said by Mr. Justice Burch in his dissenting opinion in this case: "The industrial court act was enacted in circumstances similar to those which confronted Congress when it enacted the Adamson law." He shows that the purpose of the legislature was to provide a tribunal for the settlement of controversies which endangered the continuity and production of the necessaries of life and that "the legislature did not completely socialize the manufacture of food products, the manufacture of clothing and the production of fuel, and the mere fact that

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the defendant conducts one of the essential industries, is not enough to subject its business to state control."

He points out also that any other interpretation of the act renders arbitrary the classification of industries concerned with furnishing food, clothing and fuel and segregation from other industries employing labor. Consistently with the decision of this court in Wilson v. New, he says: "A controversy cognizable by the court of industrial relations, for the purposes not merely of investigation but of regulation, must be definitely related to the subject of supplying the state with the necessities of life, and must crease an emergency respecting that supply, or basis for the classification of industries fails."

With reference to the relation which the packing company sustains to the food supply of the State, he says: (Tr. 153) "It is a matter of common knowledge that the packing industry of Kansas is one of immense magnitude. It is not necessary to present the statistics. No one would attempt to deny that the quantity production of packing house products in Kansas is enormous. Only a small percentage of the product of the defendant's small plant is sold in Kansas, and, if the plant were to close permanently, the defendant's trade would be absorbed by competitors so quickly, the people of the state who consume Wolff products would not be inconvenienced for a single meal, and the people of the state generally would not be affected at all."

Indeed, the majority opinion of the Court said: (Tr. 145) "The defendant's plant is a small one, and it may

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be admitted that, if it should cease to operate, the effect on the supply of meat and food in this state would not greatly inconvenience the people of Kansas.

It will be apparent therefore to this court that the decision in Wilson vs. New does not sustain the conclusion of the Kansas Supreme Court that notwithstanding the provisions of the fourteenth amendment to the Federal Constitution, this court has ruled that the legislature has the power to deprive employers and employes in these industries of the freedom of contract by which they may fix their own terms for the purchase and sale of labor. This court furthermore will be convinced that the doctrine of emergency which sustained the Adamson Act should not be extended to cases in which no emergency exists.

But, assuming that the interpertation of the statute by the Kansas Supreme Court is justified, it results that the classification by which owners and operators of industries produce food, clothing and fuel is subject to regulation in the matter of wages, hours and conditions of labor is purely arbitrary and a denial of the equal protection of the laws assured by the fourteenth amendment. Moreover, it appears there are many other packing plants in Kansas whose operations can not be distinguished from those of this packing company; so that to all intents and purposes this particular employer has been selected as a target for legislative action and regulation, and in this respect is denied its constitutional right to the equal protection of the law. (Tr. 95.)

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The Kansas Supreme Court Erred in its Judgment Compelling the Packing Company to Obey the Order Made By the Court of Industrial Relations in This Case, for the Reason That Many of its Provisions are in Excess of the Constitutional Powers Possessed by, or That Can Be Conferred Upon, Any Tribunal in This Country By Any Act of Legislation.

1.

Among the illegal provisions of the order are the following paragraphs:

Paragraph 2.

> "Employees, whether organized or unorganized, shall receive wages as shown in schedules hereinafter set out." (Full schedule attached to order prescribing the wages that must be paid each employee.)

Paragraph 4.

> No guarantee of time per week is specially ordered; but sufficient work *shall be* offered to the regular employees in each and every month so that the monthly earnings of regular workers will be sufficient to constitute a fair wage under the Kansas Industrial Law, as heretofore defined by this Court."

Paragraph 9.

> "Women workers *shall* receive the same wages as men engaged in the same class and kind of work."

Paragraph 11.

> "Piece work rates shall be paid in accordance with piece work schedule herein set out." (A schedule of piece work prices is attached to the order.)

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Paragraph 15.

"The temporary order heretofore made in this case *shall stand* and be complied with by the respondent company, beginning on the date of said temporary order and continuing until May 1st, 1921, the date of this order."

Paragraph 17.

"The following schedule of minimum wages *shall* be paid by the respondent company to its respective employees, to-wit:" (Here follows schedule of wages to be paid all persons employed in the plant.)

Paragraph 19.

"In departments operating twenty-four hours a day and seven days a week, each employee therein shall be entitled to one day off each week.

In other departments work performed on Sunday and legal holidays shall be paid for at the rate of time and one-half.

This order shall take effect and be in force on the 1st day of May, 1921, and shall continue until changed by the court, or changed by agreement of the parties with the approval of the court."

The full text of the order, contained in nineteen paragraphs, is set out in full in the opinion of the court below, and will be found on pages 146 and 147 of the transcript of the record in this case.

Paragraphs 1, 5, 6, 7, 8, 10, 12, 13 and 16 were not put into effect by the court below, solely because the notice served at the beginning of the proceedings was not technically broad enough to include the subjects covered therein.

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2.

The orders, which were put into execution by the supreme court of Kansas, were made by the Court of Industrial Relations at the conclusion of an extended hearing and investigation conducted under the provisions of an act of the legislature of Kansas, commonly known as the "Industrial Court Law," a copy of which is printed as an appendix to this brief, and was made pursuant to the provisions of section 7 of said act, which reads as follows:

> " . . . After the conclusion of any such hearing and investigation, and as expeditiously as possible, said Court of Industrial Relations shall make and serve upon all interested parties its findings, stating specifically the terms and conditions upon which said industry, employment, utility or common carrier should be *thereafter conducted* insofar as the matters determined by said court are concerned."

and the following provisions of section 8:

> "Sec. 8. The Court of Industrial Relations shall order such changes, if any, as are necessary to be made in and about the conduct of said industry, employment, utility or common carrier, in the matters of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage, or standard of wages, to conform to the findings of the court in such matters, as provided in this act, . . Such terms, conditions, rules, practices, wages, or standard of wages, so fixed and determined by said court and stated in said order, shall continue for such reasonable time as may be fixed by said court, or until changed by agreement of the parties with the *approval of the court.*"

A perusal of the full text of the orders shows that the board assumed full power and authority to manage and control The Wolff Packing Company, a private industry

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engaged in the manufacture of foodstuffs, and that it ordered that company to increase the wages of its employees, in the teeth of a finding by the commissioner which shows that the company had not paid a dividend for two years, and was operating at a loss. (Tr. 124, Finding 9; Tr. 126, Finding 13; Tr. 150, Opinion of the Court.)

It further appears from the evidence in the case that there was no emergency justifying any interference of the state in the business of the private industry involved, such as threatened the public peace, health or welfare. The only fact in the record relied upon to justify the interference of the Court of Industrial Relations is, that an organization of workmen, who constituted a large percentage of the employees of the local industry, had voted in favor of a strike, because the owners of the industry would not subscribe to the terms and conditions of a contract which they demanded. Later, however, the employees concluded to enforce their demands through the instrumentality of the State, and their complaint, filed with the Court of Industrial Relations, inaugurated these proceedings. No attempt was made to show that violence was threatened, or that the local industry could not have continued its operations efficiently irrespective of whether or not the complainants engaged in a strike. On the other hand, there was undisputed evidence that the local industry could procure all the help it needed at the wages it was willing to pay. (Tr. 116 and 117, Testimony of George Laverty; Tr. 117, Testimony of Mr. Brandon; Tr. 116, Testimony of Mr. Bratton; Tr. 56, Testimony of Mr. Wolff.) See also statement of dissenting judges as follows:

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> "In this instance, not only was the fundamental element of emergency lacking, but elements which, under other circumstances, might contribute to an emergency, were not present." (Tr. 153.)

There is a disagreement among the judges of the supreme court of Kansas in regard to the construction of the legislative act upon the authority of which the orders and judgment in this case are founded, but, of course, it is for that court to determine its true construction. A majority of the court have in this case construed the law to mean, that in the absence of any emergency the Court of Industrial Relations may assume general regulatory jurisdiction over certain private industries, whenever the owner and his employees fail to agree upon the subject of wages, and a strike has been voted by the employees, and that in the exercise of such regulatory powers may require the owner to pay what the court defines as a "living wage" to the employees, although the plant is being operated at a loss (majority opinion Tr. 156,) and, furthermore, it may make an order compelling the owner of the industry to furnish "sufficient work . . . to the regular employees in each and every month so that the monthly earnings of regular workers will be sufficient to constitute a fair wage under the Kansas Industrial law as heretofore defined by this court."

In view of the former decisions of this court, it seems scarcely necessary to submit any arguments to show that the Kansas legislature exceeded its constitutional power in attempting to authorize its courts to make the orders complained of, which are in plain violation of the rights of individual liberty and private property enjoyed by every

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citizen under the Fourteenth Amendment to the constitution of the United States.

The fixation by law of the wages, which the owner of the industry must pay his employees, not only denies to the employer the right of contract, but also constitutes the taking of private property for private use without compensation, and in violation of due process of law. To compel the owner of a private industry by law to furnish his regular employees sufficient employment each month to constitute a fair wage under the Kansas Industrial Court law, without reference to the terms of any contract voluntarily entered into, also constitutes the taking of private property for private use without compensation in violation of the due process provision of the Fourteenth Amendment, and denies to the owner his constitutional right of contract.

Allgeyer v. Louisiana, 165 U. S. 578.

Lochner v. New York, 198 U. S. 45.

Adair v. United States, 208 U. S. 161.

Coppage v. Kansas, 236 U. S. 1.

Truax v. Raich, 239 U. S. 33.

Prudential Insurance Co., v Cheek, No. 17 U. S. Supreme Court Advance Opinions, p. 626.

"The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution." (Lochner v. New York, supra, p. 53.)

"It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudee or malice.

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With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with any one with whom he can make contracts, and if he is wrongfully deprived of this right by others, he is entitled to redress." (Cooley on Torts, p. 278—Quoted with approval of this court in Adair v. United States, supra, p. 173.)

"Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interferred with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money." (Coppage v. Kansas, supra, p. 14.)

"That freedom in the making of contracts of personal employment, by which labor and other services are exchanged for money or other forms of property, is an elementary part of the rights of personal liberty and private property, not to be struck down directly, or arbitrarily interferred with, consistently with the due process of law guaranteed by the 14th Amendment, we are not disposed to question." (Prudential Insurance Co., v. Cheek, supra, p. 630.)

Defendant, in error, attempts to justify the judgment of the court below, and affirms the constitutionality of the act of the Kansas legislature involved in this case upon two grounds:

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A.

Because, as it asserts, the business of the plaintiff, in error, is *affected with a public interest*. In support of this contention reference is made to section 3 of the act, which provides:

"Sec. 3. (a) The operation of the following named and indicated employments, industries, public utilities and common carriers is hereby determined and declared to be affected with a public interest and therefore subject to supervision by the state as herein provided for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct of the businesses directly affecting the living conditions of the people of this state and in the promotion of the general welfare, to-wit: (1) The manufacture or preparation of food products whereby, in any stage of the process, substances are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings; (2) The manufacture of clothing and all manner of wearing apparel in common use by the people of this state whereby, in any stage of the process, natural products are being converted, either partially or wholly, from their natural state to a condition to be used as such clothing and wearing apparel; (3) The mining or production of any substance or material in common use as fuel either for domestic, manufacturing or transportation purposes; (4) The transportation of all food products and articles or substances entering into wearing apparel, or fuel, as aforesaid, from the place where produced to the place of manufacture or consumption; (5) All public utilities as defined by section 8329, and all common carriers as defined by section 8330 of the General Statutes of Kansas of 1915.

(b) Any person, firm or corporation engaged in any such industry or employment, or in the operation of such public utility or common carrier, within the State of Kansas, either in the capacity of owner, officer,

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> or worker, shall be subject to the provisions of this act, except as limited by the provisions of this act."

and a part of section 6, which reads as follows:

> "Sec. 6. It is hereby declared and determined to be necessary for the public peace, health and general welfare of the people of this state that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security, and be supplied with the necessaries of life. . . ."

The industries attempted to be brought within the jurisdiction of the Court of Industrial Relations by the provisions of this law, and subjected to the general regulatory powers of the state, are very numerous. They include flour mills, cereal factories, butchers, bakers, poultry and meat packers, tailors, shirt factories, millinery establishments, overall factories, manufacturers of boots and shoes, hosiery and underwear, coal operators, coke and brickette producers, oil refiners, producers of crude oil and natural and artificial gas for use as fuel—in short, all persons and corporations engaged in the manufacture of wearing apparel, foodstuffs of every kind, and in the production of all kinds of fuel. Excluding agriculture they constitute the most numerous and important business interests of the state.

Industries of the character of these have been carried on since the beginning of civilization. It requires no license from the state to engage in the business of grinding wheat, manufacturing overalls, or mining coal, and in the pursuit of these occupations no public functions, whatever, are

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exercised. In the manufacture and production of these necessities of life neither the proprietor, nor his workmen, exercise any grants or enjoy any privileges derived from the Government. They neither claim nor enjoy any partiality based on any grant or toleration of the public. They are simply exercising their natural and inalienable rights. They derive no benefit from, or protection of, the law, except such as are enjoyed impartially by their fellow citizens in every other industry and walk of life.

It is claimed that economic changes, modern progress, etc., have impressed these industries with "a public interest," and it is declared in section 6 of the act that it is "necessary for the public peace, health and general welfare of the people of this state that the industries . . . herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security, and be supplied with *the necessaries of life.*"

However much respect one may have for the judgment of the state legislature, its determination in such matters cannot be allowed to be conclusive.

> "The idea that any legislature, state or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, Federal and State, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. This function and duty of the judiciary distinguishes the American system from all other systems of government. The perpetuity of our institu-

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tions and the liberty which is enjoyed under them depend, in no small degree, upon the power given the judiciary to declare null and void all legislation that is clearly repugnant to the supreme law of the land." Smyth v. Ames, 169 U. S. 527, 528.)

"But when we come to inquire what are public uses for which the right of compulsory taking may be employed, and what are private uses for which the right is forbidden, we find no agreement, either in reasoning or conclusion. The one and only principle in which all courts seem to agree is that the nature of the uses, whether public or private, is ultimately a judicial question." (Hairston v. Danville & Western Railway, 208 U. S. 606.)

"Courts are not bound by mere forms, nor are they to be misled by mere pretences. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the constitution." (Mugler v. Kansas, 123 U. S. 661.)

"But, when a party appeals to this court for the protection of rights secured to him by the Federal Constitution, the decision is not to depend upon the form of the state law, nor even upon its declared purpose, but rather upon its operation and effect as applied and enforced by the State; and upon these matters this court cannot, in the proper performance of its duty, yield its judgment to that of the state court." (St. Louis S. W. Ry. Co., v. Arkansas, 235 U. S. 350, 362, and cases cited.)

It is not within the province of the state to provide its citizens with food, fuel or clothing. That is the private concern of the individual himself.

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Are foodstuffs, clothing and fuel necessaries of life to any greater extent now than they have always been? Since when, and by what particular change or improvement in our economic system, has the interest of the public in the production and manufacture of the necessaries of life been enhanced? The answers to these questions are obvious.

Production and manufacture are fundamentally and unchangeably private business. The right to engage his property and his services in these business activities, and to control and manage the same according to his own judgment, to exercise the most perfect freedom in contracts connected therewith, to hire and discharge, to engage one's services or refuse employment, to operate, or suspend operations, as his own best judgment may dictate, are among the inalienable rights of each American citizen. No legislature under any pretext whatever can limit, modify or regulate the freedom of citizens in this respect —save in the strict exercise of the police power operating under the maxim, "Sic utere tuo, ut alienum non loedas."

It is a fundamental principle of the American system of government that production and manufacture shall be left to the initiative and management of private citizens, free from the embarrassments of state interference, except such as may be strictly necessary for the protection of the public safety, health and morals. The unexampled abundance with which the "necessaries of life" have been supplied to the people during the century and a half of our national existence, sufficiently demonstrates the wisdom of

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the constitutional policy of non-interference by the state in the private business affairs of its citizens.

The foregoing order of the Court of Industrial Relations of the state of Kansas, as approved and ordered put into execution by the supreme court of that state, subjects to political servitude practically all the principal industries of the state except agriculture. The law, that furnishes the foundation for the order and decree of the supreme court, is the latest and most significant development of a reactionary tendency towards the old form of plenary power in government which prevailed universally in the world prior to the adoption of the constitutional system, according to which our own government was organized.

That the individual has rights that are beyond the power of government to take away, which in the language of our system are known as inalienable, and that the principal object of government is a protection of these rights, is the peculiar and invaluable contribution of America to the science of government. In general terms, these inalienable rights are defined as "life, liberty, and the pursuit of happiness."

The individual citizen, according to the theory of our system, does not derive these rights from any charter granted by his fellow men, but, to use the language of the Declaration of Independence, it is "self-evident, that all men are . . . endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

It was the belief of the members of the convention, who framed and submitted the original form of our constitution

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for ratification, that the government created by that great instrument, being one of merely delegated authority, possessed no power to invade the unalienable rights of individual citizens. Doubtless it was the intention and understanding of those great men, that the instrument they had constructed was not capable of an interpretation that would confer upon the government existing under it any power, whatever, to violate or override these rights. But in order to forever set at rest any question in regard to the powers of the government in this respect, the first ten amendments to the constitution were formulated and agreed upon during the period of public discussion over the adoption of the constitution, and it was the assurance that these amendments would be promptly adopted, that made possible the radification of the original instrument.

As everybody knows, these amendments were promptly and immediately adopted. In a substantial sense, therefore, the first ten amendments are really a part of the original constitution, and gave to the people of this country a double sense of security in the enjoyment of life, liberty, and the pursuit of happiness—the first security being, that no power was conferred upon the government to violate these rights of the individual; and, secondly, that the specific language of the first ten amendments forbade any attempt to exercise such power.

These constitutional limitations applied in the beginning only to the federal government, but, after seventy-nine years of experience, the people of the United States, through the adoption of the Fourteenth Amendment, at last extended the principal guarantees of life, liberty, and

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the pursuit of happiness to every citizen of the United States under all circumstances by limiting the power of all state governments in this respect, as that of the federal government had been limited from the beginning.

It is claimed on behalf of the defendant, in error, that the provisions of the Kansas Industrial Court Law above referred to, and the orders made in pursuance thereof in this case, should be upheld as a valid exercise of the police power of the state, independently of whether or not the operation of the numerous industries mentioned in the statute are adjudged to be "affected with a public interest."

Without attempting the impossible task of defining the term "police power," nevertheless it may be confidently asserted that the powers of government, subject to this classification, are separable into two general groups: (1) Those inalienable powers of the state which are held to underlie the constitution itself, and in subordination to which all constitutional limitations are constructed, and (2) Those powers of internal regulations which may be exercised only in subordination to express constitutional limitations.

> "It must, of course, be conceded that there is a limit to the valid exercise of the police power of the State. There is no dispute concerning this general proposition. Otherwise the Fourteenth Amendment would have no efficacy and the legislatures of the States would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—

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become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint." (Lochner v. N. Y., supra, p. 56.)

As to the first group, it has been well said that it includes "such (powers) only as are so clearly necessary to the safety, comfort, and well-being of society, or so imperatively required by the public necessity, as to lead to the rational and satisfactory conclusion that the framers of the Constitution could not, as men of ordinary prudence and foresight, have intended to prohibit their exercise in the particular case, notwithstanding the language of the prohibition would otherwise include it." (People v. Jackson & Michigan Plank Road Co., 9 Mich. 285, 307.)

The police power in this sense constitutes an inalienable right of a state much as the right of self-defense is an inherent natural and inalienable right of the individual. If one is attacked, and his life, liberty, or property thereby placed in jeopardy, he has the right, and is impressed with the duty, to use such force as may be necessary for his own protection—but that is the limit. He must not use more, or himself become the aggressor. This right the individual does not derive from any government, nor can any legislature take it from him. It was the law before any governments were set up among men, and will remain when all human governments shall have passed away.

When society was organized the right and duty to protect the individual and his property from attack and injury devolved upon the state. Not that the right of self-defense was taken away from the individual, but that society became invested with the same power and duty to be exer-

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cised for the benefit of the citizen, thus adding the invincible power of the State to the feeble arm of the individual, for the defense of his life, his liberty, and his property. It follows, therefore, that just as the individual is limited in his right of self-defense to the use of only such force as is necessary for *protection* of life, liberty and property, so the State, in the exercise of its strictly police powers, is limited to precisely the same use of its coercive means.

Speaking of this power Judge Cooley says:

> "The maxim, Sic utere tuo ut alienum non loedas, is that which lies at the foundation of the power; and to whatever enactment affecting the management and business of private corporations it cannot fairly be applied, *the power itself will not extend.*" (Cooley's Constitutional Limitations, 7th ed., p. 838.)

Between the strict police power of a state which restrains one in the exercise of his natural rights, and the use of his private property within those limits which makes it possible for all others to enjoy their rights of personal liberty and private property, thus creating that highest standard of freedom possible in organized society, which we call civil liberty, and that spurious and counterfeit thing masquerading under the name of police power which seeks to dominate, control and direct the actions and property of individuals in their private businesses, and within the domain of the inalienable rights of persons, a great gulf is fixed. The first is a guardian and bulwark of civil liberty. The latter is a mask to hide the hideous countenance of tyranny. The one encourages, stimulates

and protects society in its onward and upward way; the other poisons the atmosphere of freedom, discourages and prevents progress, favors the intrigues of arbitrary power, and leads the reversionary way to tyranny and oppression.

The general regulatory powers exercised by the State over quasi public corporations in their ownership and control of property, devoted to a public use, degenerate into mere governmental impertinence when an attempt is made to exercise the same power and control over the property and affairs of a private individual or a private corporation. More than impertinence, it is a flagrant violation of the inalienable rights of the citizen in the exercise of his personal liberty and the enjoyment of his private property.

As shown by the terms of the Kansas Industrial Court Law, and the judgment and orders made by the Court of Industrial Relations, the object of the law and of the orders of the court, made in pursuance thereof, is not to limit the use of the employer's property in such a way as not to injure others, but to compel its use for the *benefit* of others—to devote his property and means to the payment of a wage *fixed by law*, independently of his own wishes and initiative—to compel him to furnish his workmen regular employment—to compel him to pay the same wages to women as to men—to compel him to operate his manufacturing continuously, and generally to use his own efforts, his own means, and his own facilities in such a way as, in the judgment of the Court of Industrial Relations, will best subserve the public welfare. That such a law and such an order are in violation of the constitutional rights of the

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employer is apparent from a consideration of the most elementary principles.

"The business conducted by the defendant was its property, and in the exercise of this ownership it is protected by the constitution. It could abandon or discontinue its operations at pleasure. It had the right, beyond the possibility of legislative interference, to make any contract with reference thereto not in violation of law. In the operation of its property it may employ such persons as are desirable, and discharge, without reason, those who are undesirable. It is at liberty to contract for the services of persons in any manner that is satisfactory to both. No legislative restrictions can be imposed upon the lawful exercise of these rights." (Brick Co., v. Perry, 69 Kan. 300, 301.)

"The defendant is simply a private corporation authorized by its charter to manufacture flour and feed for sale. The public has no more interest in it than in the corporation from which the land in question is sought to be taken." (A lumber and coal company.) "They are both useful and important business instrumentalities, and contribute to the growth and development of the locality where they are situated. This may also be said, however, of every legitimate business. To a limited extent every honest industry adds to the general sum of prosperity and promotes the public welfare. This is not enough; a business which may invoke the right of eminent domain must be one in which the public has an exceptional and peculiar interest, and one which it might on proper occasion control and manage in the interests of the public." (Howard v. Schwartz, 77 Kan. 609.)

"The law can only guarantee to men, on a legal plane of equality, protection against trespasses upon their rights. To place the working classes under special protection against the aggression of capital, beyond the careful and strict enforcement of their rights; to compel the employer to pay the rate of wages determined by the state to be equitable, is to change the government from a government of free men to a paternal government, or a despotism, which is the same

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thing." (Tiedeman's Limitation of Police Power, Sec. 178, p. 571.)

It seems sufficiently clear that the attempt on the part of the legislature of the state of Kansas to subject numerous private industries of that state to the general regulatory supervision extended over public utilities, common carriers, and other businesses "affected with a public interest" or "devoted to a public use" cannot be upheld as an exercise of strictly police power, but falls within that group of so-called police powers which can only be enforced in subordination to the restraints of the Fourteenth Amendment to our federal constitution.

The Judgment of the Kansas Supreme Court Compels the Packing Company to Pay Increased Wages to Its Employes, Notwithstanding the Company Was and is Operating Its Property at a Loss and the Payment of Such Increased Wages Necessarily Would Increase Its Losses and Thereby Deprive it of Its Property Without Due Process of Law.

It is deemed proper here to restate the facts established by the evidence and found by the commissioner relating to the financial condition of the packing company and the effect of the order upon its operations. The evidence shows and the commissioner's report finds that for three years prior to the making of this order the packing company has not only not made any profit or gain from its operations, but has suffered an actual loss of several hundred thousand dollars; that is, its receipts from the

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sale of its products have been insufficient by many thousand dollars to pay the cost of raw material and the expenses of preparing and placing its products on the market; that it is obliged to sell its products in a highly competitive market, not only in the State of Kansas but in other states; that for more than three years the operations of the property have not earned and the owners have not received any dividends; that the direct effect of the order upon the operation of the company is an increase in excess of $20,000.00 annually and to remove the defendant that much farther from receiving a fair return upon an investment of approximately $1,000,000.00. It is in these circumstances and upon these facts that the Kansas Supreme Court ruled that it was within the power of the state to compel this defendant to suffer further loss in order that its employes might receive increased wages.

The law settled by many decisions of this court is that whenever it is made to appear that an owner of property affected with a public interest cannot pay expenses of operation out of revenue from operation the restraint of the fourteenth amendment prevents regulation in any form, or on any pretext, which increases his losses, for the constitutional reason, that power to regulate does not include the right to take the owner's property and hand it over to the public, or for a public purpose, or to another private individual. It is believed to be the settled law of this country that however great the police powers of the state may be, its limits are passed whenever a state, by legislative order, attempts to take one person's property and give it to another, or to the public, without compensation.

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In the cases upholding the power to regulate the operations of private property this limitation is as firmly established as the power itself. Such property belongs to the owner precisely the same as any other property belongs to its owner. Therefore, legislation regulating the use or operations of private property affected with a public interest is not a transfer on assignment of such property from its owner to the public.

All regulation of this character order affects net income from operations. It is apparent at once that net income may be affected in but two ways: One by increasing or decreasing the receipts from sales or services; and the other by increasing or decreasing the expenditures for raw material and preparing and marketing the products. In the so-called rate cases involving legislative rates or charges to be paid by the public for the services of public utilities, net revenue is affected by increasing or decreasing the reward or compensation which such utilities receive for their services. In this case the net revenue of the packing company is affected by increasing the expenses of production. Identical effects on the owners of such property are produced by either method. A public utility whose net revenue is decreased by legislation decreasing the rates or charges for its services, under all of the cases, may justly complain if such legislation reduces its net revenue below the cost of the service, so this packing company, for like reasons, and upon like authority, justly may complain that the legislative wages prescribed by this order will, by increasing the expenses of operation, decrease its revenue below the cost of production. In the

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rate cases it is settled law that no board or legislative commission has, or can have, the power to compel the owner of private property to *donate* the use of his property to the public. He is entitled, as a matter of constitutional right, to earn some compensation, and legislation attempting to deprive him of such right is void whatever may be the excuse offered for its enactment. Counsel for the packing company insist that it must be equally true in wage cases that legislation is void which increases the expenses of operation, if by so doing the owner of the property is deprived of any compensation from its operation.

In its opinion of October 9, 1921, (Tr. 31) the Kansas Supreme Court said that in all industries affected with a public interest revenue and wages are so bound together that they cannot be separated; that "rates cannot be completely controlled unless wages are controlled and wages cannot be controlled unless charges are controlled." (109 Kan. 641.) In other words, where revenue cannot be controlled by fixing the rates at which the industry shall sell its products, public control of wages necessarily cannot be absolute but must depend upon conditions which do not prevail, theoretically at least, in the case of public utilities. The objection of the packing company to this increase of wages to be paid to its employes is that its revenue from the sales of its products is insufficient to support any additional burdens. If this objection were urged by a public utility such a railroad, telephone company, water company, and the like, it might well be answered that since the state could increase the charges or rates of the utility and thereby assure sufficient increase

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of revenue to support the burden of increased wages, it would not be entitled to the weight it must have in this case where an increase of the revenue of the packing company from the sale of its products is quite beyond the power of the state to accomplish. In the specially concurring opinion delivered by Mr. Justice McKenna in Wilson vs. New, 243 U. S. 251, 263, he said:

> "To a carrier a wage law is but an item in its accounts, requiring it may be, an adjustment of its operations, the expense to be recompensed through its rates. If it be said that rates cannot be changed at will but only by permission of authority, I cannot think that permission will not be given if it be necessary to fulfill the command of the law. Indeed, if not given, the law might encounter constitutional restrictions."

That language applies with equal force to all public utilities because, if Wilson vs. New is sound authority beyond the emergency held to have justified it, the state may control, not only the revenue of a public utility by increasing or decreasing its rates or charges, but also its expenses by increasing or decreasing the wages paid to its employes. But in this case the state is wholly without power to add a single penny to the packing company's revenue. Accordingly, it must be concluded that its power to increase the packing company's expenses by increasing the wages of its employes can be exercised, if at all, only where the state can show that such increase can be borne out of revenue without depriving the owner of at least some compensation for the capital he has invested in the enterprise and property used in the public interest.

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It was held by this court in Pa. Coal Co. vs. Mahon, (43 S. C. Rep. 158, decided Dec. 11, 1922) that to make it commercially impracticable for the owner of coal lands to mine coal has very nearly the same effect for constitutional purposes as appropriating or destroying it.

It seems clear that to make it commercially impracticable for the owner of this packing plant to operate it because of the conditions imposed by the industrial court's order has very nearly the same effect for constitutional purposes as appripriating or destroying the plant.

In Reagan v. Farmers Loan & Trust Company, 154 U. S. 362, 410, this court considered an order of the Texas Railroad Commission fixing railroad rates. The company resisted the order on the ground that it was losing money and that the necessary effect of the order was to diminish its revenue and increase its losses. This court considered all of the previous cases and reached the conclusion that the fourteenth amendment prevents legislation, in whatever form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of another, or of the public. Mr. Justice Brewer saying, "This, as has been often observed, is a government of law, and not a government of men, and it must never be forgotten that under such government, with its constitutional limitations and guarantees the forms of law and the machinery of government, with all their reach and power, must in their actual workings stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property, legally acquired and legally held." When pressed with the argu-

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ment that Texas was suffering great depression in agriculture, and that although the rates fixed by the legislative order might impose loss upon the carrier, it was in the public interest that such rates should be granted for the benefit of the people, this court said:

> "Is it just to deprive one party of all compensation in order that another may make some profit? They who invest their money in railroads take the same chances that men engaged in other business do of making profit from the carrying on of their business; and as appears from other cases submitted to us with this, some of the railroads in the State of Texas have operated at a constant loss. But such possibilities of loss are simply the natural results of all business freely carried on, against which the law is powerless to afford protection. Very different are the considerations which arise when the strong arm of the law is invoked to compel parties engaged in legitimate business, and business which cannot be abandoned at will, to so reduce their charges for services as to make the carrying on of that business result in a continued loss. In the one case the law is powerless to prevent injury. In the other it is used to work injury. Counsel suggests that the state itself may construct and operate railroads, and then may properly make rates so low that the business is done at a loss. They refer to the postal system of the United States which, carried on for the common welfare, not infrequently results in a loss which is made good out of the public treasury. But the parallel is not good. In the case suggested the loss is cast through taxation upon the general public, and all bear their proportional share of that loss which is incurred in securing a common benefit, while the scope of this legislation is to secure such common benefit at the expense of a single class. The equal protection of the laws, the spirit of common justice—forbids that one class should by law be compelled to suffer loss that others may make gain."

This court held, consistently with all the cases on the

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subject that the limitation of public interference is that it must in all cases be reasonable and not deprive the owner of the private property of his right to compensation for its use without due process of law, nor deny to him the equal protection of the laws which assures to everyone the right to earn a reasonable income for the use of his property.

Section 20 of the industrial court act provides that in certain cases property engaged in the enumerated industries may be taken over and operated by the state and that in such cases wages paid to employes shall be reasonable and sufficient to afford them a fair living and the owners of such property shall receive a fair return upon the capital invested.

Assuming that the Kansas legislature has the power to take over the property for the purpose of protecting the food supply of the public, nothing can be more certain than that losses sustained in the operation of such property would fall upon the public and be made good out of the public treasury and would not fall upon the owner.

The course of the Kansas decisions has produced results which are apparently inconsistent with the purpose of this statute. That court held in the Howat case that production of the flow of the necessities of life from producer to consumer is alone what the industrial court act attempts to do. It held the necessity for protecting this packing company's small contribution to this flow of the necessities created an emergency threatening the public welfare sufficient to sustain the exercise of the industrial court's extraordinary powers. It was advised by the report of its

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commissioner that if the order made by the industrial court was enforced the packing company would be compelled to go out of business; and, consequently, cease furnishing its small contribution to the flow of the necessities. Whereupon, the Kansas court directed the order to be enforced, saying in effect: Let the packing company cease producing food and remove its plant, unless it can arrange its affairs so as to obey an order which, because of conditions, requires it to stop furnishing a part of this supply. The reason given for thus depriving the Kansas people of this packing company's small contribution to the flow of food supplies is the welfare of the employes engaged in operating its plant. According to the interpretation, claims of employes for increased wages must be allowed at the expense of the peoples' supply of a necessity of life. It appears that in its actual operation this statute destroys the very thing it was designed to protect. We were told that this statute was an industrial prophylactic (State vs. Howat, 109 Kan. 407) to benefit the public not immediately concerned with labor disputes by assuring to them an uninterrupted flow of the necessities of life from producer to consumer. We now learn that this flow of necessities is not so important as the sufficiency of wages of workmen employed in these industries; and, that the paramount object and purpose of this statute is to secure to labor sufficient compensation to enable workers to live in the manner defined by the industrial court; that, this statute not only permits but requires that producers of the necessities of life who cannot pay such wages shall go out of business. Such a statute is, indeed, an

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industrial prophylactic. A few doses of the ingredients prescribed and administered to the packing company will convince the most obstinate believer in legislative *materia medica* that even the wonderful vitality of American industry cannot withstand the paralyzing effects of such treatment.

The commissioner finds that this packing company cannot go on if it obeys this order. Therefore, the approximate, direct cause of its ruin is not its inability to carry on its business with employes satisfied with the wages it can afford to pay, but because it is forbidden to do so. It is the administration of this statute in the order made by the industrial court, not social unrest arising out of wage problems, that will close the long and useful corporate life of this Kansas enterprise. For a full generation it has continued its business with scarcely a ripple of labor trouble. Like thousands of others it is struggling to weather the storm of reconstruction. It continued its operations in 1920 at a great sacrifice on the part of its stockholders. Is it now to be destroyed by an act of the Kansas legislature assuring owners of such industries that wages prescribed under its authority shall be such as to enable them efficiently and successfully to continue to produce necessities of life, and, that they are entitled to receive a fair rate of return upon their invested capital?

It is respectfully submitted that the Kansas statute and the order made upon its authority are void because they deprive this packing company of its property without due process of law and deny to it the equal protection of the laws in violation of the fourteenth amendment to the Con-

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stitution of the United States. It is believed that this court will so hold and reverse the judgment of the Kansas Supreme Court with directions to deny the peremptory writ of mandamus.

JOHN S. DEAN,

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D. R. HITE,

Attorneys for Plaintiff-in-Error.

March, 1923.

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APPENDIX.

Chapter 29, Special Session Laws of 1920.

Substitute for Senate Bill No. 1.

AN ACT creating the Court of Industrial Relations, defining its powers and duties, and relating thereto, abolishing the Public Utilities Commission, repealing all acts and parts of acts in conflict therewith, and providing penalties for the violation of this act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. There is hereby created a tribunal to be known as the Court of Industrial Relations, which shall be composed of three judges who shall be appointed by the governor, by and with the advice and consent of the Senate. Of such three judges first appointed, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, said terms to begin simultaneously upon qualification of the persons appointed therefor. Upon the expiration of the term of the three judges first appointed as aforesaid, each succeeding judge shall be appointed and shall hold his office for a term of three years and until his successor shall have been qualified. In case of a vacancy in the office of judge of said Court of Industrial Relations the governor shall appoint his successor to fill the vacancy for the unexpired term. The salary of each said judges shall be five thousand dollars per year payable monthly. Of the judges first to be appointed the one appointed for the three-year term shall be the presiding judge, and thereafter the judge whose term of service has been the longest shall be the presiding judge: *Provided*, That in case two or more of said judges shall have served the same length of time, the presiding judge shall be designated by the governor.

Sec. 2. (*a*) The Court of Industrial Relations shall have such power, authority and jurisdiction, and shall perform such duties as are in this act set forth.

(*b*) In any matter pending before the Court of Industrial Relations, if it shall be brought to the attention of such

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court that there is a matter pending before the Public Utilities Commission in relation to the rate charged by the employer, the Court of Industrial Relations may order such matters to be heard and determined at the same time by such commission and Court of Industrial Relations, sitting as one body, the presiding judge of said Court of Industrial Relations presiding, and in case of a tie vote, the presiding judge of said Court of Industrial Relations shall cast an additional vote.

Sec. 3. (*a*) The operation of the following named and indicated employments, industries, public utilities and common carriers is hereby determined and declared to be affected with a public interest and therefore subject to supervision by the state as herein provided for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct of the businesses directly affecting the living conditions of the people of this state and in the promotion of the general welfare, to wit: (1) The manufacture or preparation of food products whereby, in any stage of the process, substances are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings; (2) The manufacture of clothing and all manner of wearing apparel in common use by the people of this state whereby, in any stage of the process, natural products are being converted, either partially or wholly, from their natural state to a condition to be used as such clothing and wearing apparel; (3) The mining or production of any substance or material in common use as fuel either for domestic, manufacturing, or transportation purposes; (4) The transportation of all food products and articles or substances entering into wearing apparel, or fuel, as aforesaid, from the place where produced to the place of manufacture or consumption; (5) All public utilities as defined by section 8329, and all common carriers as defined by section 8330 of the General Statutes of Kansas of 1915.

(*b*) Any person, firm or corporation engaged in any such industry or employment, or in the operation of such public utility or common carrier, within the state of Kansas, either in the capacity of owner, officer, or worker, shall be subject to the provisions of this act, except as limited by the provisions of this act.

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Sec. 4. Said Court of Industrial Relations shall have its office at the capital of said state in the city of Topeka, and shall keep a record of all its proceedings which shall be a public record and subject to inspection the same as other public records of this state. Said court, in addition to the powers and jurisdiction heretofore conferred upon, and exercised by, the Public Utilities Commission, is hereby given full power, authority and jurisdiction to supervise, direct and control the operation of the industries, employments, public utilities, and common carriers in all matters herein specified and in the manner provided herein, and to do all things needful for the proper and expeditious enforcement of all provisions of this act.

Sec. 5. Said Court of Industrial Relations is hereby granted full power to adopt all reasonable and proper rules and regulations to govern its proceedings, the service of process, to administer oaths, and to regulate the mode and manner of all its investigations, inspections and hearings: *Provided, however*, That in the taking of testimony the rules of evidence, as recognized by the supreme court of the state of Kansas in original proceedings therein, shall be observed by said Court of Industrial Relations; and testimony so taken shall in all cases be transcribed by the reporter for said Court of Industrial Relations in duplicate, one copy of said testimony to be filed among the permanent records of said court, and the other to be submitted to said supreme court in case the matter shall be taken to said supreme court under the provisions of this act.

Sec. 6. It is hereby declared and determined to be necessary for the public peace, health and general welfare of the people of this state that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security, and be supplied with the necessaries of life. No person, firm, corporation, or association of persons shall in any manner or to any extent, wilfully hinder, delay, limit or suspend such continuous and efficient operation for the purpose of evading the purpose and intent of the provisions of this act; nor shall any person, firm, corporation, or association of persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit or suspend such continuous and

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efficient operation as aforesaid, except under the terms and conditions provided by this act.

Sec. 7. In case of a controversy arising between employers and workers, or between groups or crafts of workers, engaged in any of said industries, employments, public utilities, or common carriers, if it shall appear to said Court of Industrial Relations that said controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, full power, authority and jurisdiction are hereby granted to said Court of Industrial Relations upon its own initiative, to summon all necessary parties before it and to investigate said controversy, and to make such temporary findings and orders as may be necessary to preserve the public peace and welfare and to preserve and protect the status of the parties, property and public interests involved pending said investigations, and to take evidence and to examine all necessary records, and to investigate conditions surrounding the workers, and to consider the wages paid to labor and the return accruing to capital, and the rights and welfare of the public, and all other matters affecting the conduct of said industries, employments, public utilities or common carriers, and to settle and adjust all such controversies by such findings and orders as provided in this act. It is further made the duty of said Court of Industrial Relations, upon complaint of either party to such controversy, or upon complaint of any ten citizen taxpayers of the community in which such industries, employments, public utilities or common carriers are located, or upon the complaint of the attorney-general of the state of Kansas, if it shall be made to appear to said court that the parties are unable to agree and that such controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly

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operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, to proceed and investigate and determine said controversy in the same manner as though upon its own initiative. After the conclusion of any such hearing and investigation, and as expeditiously as possible, said Court of Industrial Relations shall make and serve upon all interested parties its findings, stating specifically the terms and conditions upon which said industry, employment, utility or common carrier should be thereafter conducted in so far as the matters determined by said court are concerned.

Sec. 8. The Court of Industrial Relations shall order such changes, if any, as are necessary to be made in and about the conduct of said industry, employment, utility or common carrier, in the matters of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage, or standard of wages, to conform to the findings of the court in such matters, as provided in this act, and such orders shall be served at the same time and in the same manner as provided for the service of the court's findings in this act: *Provided*, All such terms, conditions and wages shall be just and reasonable and such as to enable such industries, employments, utilities or common carriers to continue with reasonable efficiency to produce or transport their products or continue their operations and thus to promote the general welfare. Service of such order shall be made in the same manner as service of notice of any hearing before said court as provided by this act. Such terms, conditions, rules, practices, wages, or standard of wages, so fixed and determined by said court and stated in said order, shall continue for such reasonable time as may be fixed by said court, or until changed by agreement of the parties with the approval of the court. If either party to such controversy shall in good faith comply with any order of said Court of Industrial Relations for a period of sixty days or more, and shall find said order unjust, unreasonable or impracticable, said party may apply to said Court of Industrial Relations for a modification thereof and said Court of Industrial Relations shall hear and determine said application and make findings and orders in like manner and with like effect as originally. In such case the

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evidence taken and submitted in the original hearing may be considered.

Sec. 9. It is hereby declared necessary for the promotion of the general welfare that workers engaged in any of said industries, employments, utilities or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor; and that capital invested therein shall receive at all times a fair rate of return to the owners thereof. The right of every person to make his own choice of employment and to make and carry out fair, just and reasonable contracts and agreements of employment, is hereby recognized. If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable and all such orders shall be enforced as in this act provided.

Sec. 10. Before any hearing, trial or investigation shall be held by said court, such notice as the court shall deem necessary shall be given to all parties interested by registered U. S. mail addressed to said parties to the post office of the usual place of residence or business of said interested parties when same is known, or by the publication of notice in some newspaper of general circulation in the county in which said industry or employment, or the principal office of such utility or common carrier is located, and said notice shall fix the time and place of said investigation or hearing. The costs of publication shall be paid by said court out of any funds available therefor. Such notice shall contain the substance of the matter to be investigated, and shall notify all persons interested in said matter to be present at the time and place named to give such testimony or to take such action as they may deem proper.

Sec. 11. Said Court of Industrial Relations may employ a competent clerk, marshal, shorthand reporter, and such expert accountants, engineers, stenographers, attorneys and other employees as may be necessary to conduct the business of said court; shall provide itself with a proper seal

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and shall have the power and authority to issue summons and subpoenas and compel the attendance of witnesses and parties and to compel the production of the books, correspondence, files, records, and accounts of any industry, employment, utility or common carrier, or of any person, corporation, association or union of employees affected, and to make any and all investigations necessary to ascertain the truth in regard to said controversy. In case any person shall fail or refuse to obey any summons or subpoena issued by said court after due service, then and in that event said court is hereby authorized and empowered to take proper proceedings in any court of competent jurisdiction to compel obedience to such summons or subpoena. Employees of said court whose salaries are not fixed by law shall be paid such compensation as may be fixed by said court, with the approval of the governor.

Sec. 12. In case of the failure or refusal of either party to said controversy to obey and be governed by the order of said Court of Industrial Relations, then and in that event said court is hereby authorized to bring proper proceedings in the supreme court of the state of Kansas to compel compliance with said order; and in case either party to said controversy should feel aggrieved at any order made and entered by said Court of Industrial Relations, such party is hereby authorized and empowered within ten days after service of such order upon it to bring proper proceedings in the supreme court of the state of Kansas to compel said Court of Industrial Relations to make and enter a just, reasonable and lawful order in the premises. In case of such proceedings in the supreme court by either party, the evidence produced before said Court of Industrial Relations may be considered by said supreme court, but said supreme court, if it deem further evidence necessary to enable it to render a just and proper judgment, may admit such additional evidence in open court or order it taken and transcribed by a master or commissioner. In case any controversy shall be taken by either party to the supreme court of the state of Kansas under the provisions of this act, said proceedings shall take precedence over other civil cases before said court, and a hearing and determination of the same shall be by said court expedited as fully as may be possible consistent with a careful and thorough trial and consideration of said matter.

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Sec. 13. No action or proceeding in law or equity shall be brought by any person, firm or corporation to vacate, set aside, or suspend any order made and served as provided in this act, unless such action or proceeding shall be commenced within thirty days from the time of the service of such order.

Sec. 14. Any union or association of workers engaged in the operation of such industries, employments, public utilities or common carriers, which shall incorporate under the laws of this state shall be by said Court of Industrial Relations considered and recognized in all its proceedings as a legal entity and may appear before said Court of Industrial Relations through and by its proper officers, attorneys or other representatives. The right of such corporations, and of such unincorporated unions or associations of workers, to bargain collectively for their members is hereby recognized: *Provided*, That the individual members of such unincorporated unions or associations, who shall desire to avail themselves of such right of collective bargaining, shall appoint in writing some officer or officers of such union or association, or some other person or persons as their agents or trustees with authority to enter into such collective bargains and to represent each and every of said individuals in all matters relating thereto. Such written appointment of agents or trustees shall be made a permanent record of such union or association. All such collective bargains, contracts, or agreements shall be subject to the provisions of section nine of this act.

Sec. 15. It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify as a witness before the Court of Industrial Relations, or shall sign any complaint or shall be in any way instrumental in bringing to the attention of the Court of Industrial Relations any matter of controversy between employers and employees as provided herein. It shall also be unlawful for any two or more persons, by conspiring or confederating together, to injure in any manner any other person or persons, or any corporation, in his, their, or its business, labor, enterprise, or peace and security, by boycott, by discrimination, by picketing, by advertising, by propaganda, or other means, because of any action taken by any such person or persons,

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or any corporation, under any order of said court, or because of any action or proceeding instituted in said court, or because any such person or persons, or corporation, shall have invoked the jurisdiction of said court in any matter provided for herein.

Sec. 16. It shall be unlawful for any person, firm, or corporation engaged in the operation of any such industry, employment, utility, or common carrier wilfully to limit or cease operations for the purpose of limiting production or transportation or to affect prices, for the purpose of avoiding any of the provisions of this act; but any person, firm, or corporation so engaged may apply to said Court of Industrial Relations for authority to limit or cease operations, stating the reasons therefor, and said Court of Industrial Relations shall hear said application promptly, and if said application shall be found to be in good faith and meritorious, authority to limit or cease operations shall be granted by order of said court. In all such industries, employments, utilities or common carriers in which operation may be ordinarily affected by changes in season, market conditions, or other reasons or causes inherent in the nature of the business, said Court of Industrial Relations may, upon application and after notice to all interested parties, and investigation, as herein provided, make orders fixing rules, regulations and practices to govern the operations of such industries, employments, utilities or common carriers for the purpose of securing the best service to the public consistent with the rights of employers and employees engaged in the operation of such industries, employments, utilities or common carriers.

Sec. 17. It shall be unlawful for any person, firm or corporation, or for any association of persons, to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to conspire or confederate with others to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to induce or intimidate any person, firm or corporation engaged in any of said industries, employments, utilities or common carriers to do any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, for the purpose or with the intent to hinder, delay, limit, or suspend the operation of any of the industries, employments, utilities or common carriers herein

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specified or indicated, or to delay, limit, or suspend the production or transportation of the products of such industries, or employments, or the service of such utilities or common carriers: *Provided*, That nothing in this act shall be construed as restricting the right of any individual employee engaged in the operation of any such industry, employment, public utility, or common carrier to quit his employment at any time, but it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engage in what is known as "picketing," or to intimidate by threats, abuse, or in any other manner, any person or persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act.

Sec. 18. Any person wilfully violating the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction of this state shall be punished by a fine of not to exceed $1,000, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment.

Sec. 19. Any officer of any corporation engaged in any of the industries, employments, utilities or common carriers herein named and specified, or any officer of any labor union or association of persons engaged as workers in any such industry, employment, utility or common carrier, or any employer of labor, coming within the provisions of this act, who shall wilfully use the power, authority or influence incident to his official position, or to his position as an employer of others, and by such means shall intentionally influence, impel, or compel any other person to violate any of the provisions of this act, or any valid order of said Court of Industrial Relations, shall be

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deemed guilty of a felony and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not to exceed $5,000, or by imprisonment in the state penitentiary at hard labor for a term not to exceed two years, or by both such fine and imprisonment.

Sec. 20. In case of the suspension, limitation or cessation of the operation of any of the industries, employments, public utilities or common carriers affected by this act, contrary to the provisions hereof, or to the orders of said court made hereunder, if it shall appear to said court that such suspension, limitation, or cessation shall seriously affect the public welfare by endangering the public peace, or threatening the public health, then said court is hereby authorized, empowered and directed to take proper proceedings in any court of competent jurisdiction of this state to take over, control, direct and operate said industry, employment, public utility or common carrier during such emergency: *Provided*, That a fair return and compensation shall be paid to the owners of such industry, employment, public utility or common carrier, and also a fair wage to the workers engaged therein, during the time of such operation under the provisions of this section.

Sec. 21. When any controversy shall arise between employer and employee as to wages, hours of employment, or working or living conditions, in any industry not hereinbefore specified, the parties to such controversy may, by mutual agreement; and with the consent of the court, refer the same to the Court of Industrial Relations for its findings and orders. Such agreement of reference shall be in writing, signed by the parties thereto; whereupon said court shall proceed to investigate, hear, and determine said controversy as in other cases, and in such case the findings and orders of the Court of Industrial Relations as to said controversy shall have the same force and effect as though made in any essential industry as herein provided.

Sec. 22. Whenever deemed necessary by the Court of Industrial Relations, the court may appoint such person or persons, having a technical knowledge of bookkeeping, engineering, or other technical subjects involved in any inquiry in which the court is engaged, as a commissioner for the purpose of taking evidence with relation to such subject. Such commissioner when appointed shall take an oath to well and faithfully perform the duties imposed

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upon him, and shall thereafter have the same power to administer oaths, compel the production of evidence, and the attendance of witnesses as the said court would have if sitting in the same matter. Said commissioner shall receive such compensation as may be provided by law or by the order of said court, to be approved by the governor.

Sec. 23. Any order made by said Court of Industrial Relations as to a minimum wage or a standard of wages shall be deemed *prima facie* reasonable and just, and if said minimum wage or standard of wages shall be in excess of the wages theretofore paid in the industry, employment, utility or common carrier, then and in that event the workers affected thereby shall be entitled to receive said minimum wage or standard of wages from the date of the service of summons or publication of notice instituting said investigation, and shall have the right individually, or in case of incorporated unions or associations, or unincorporated unions or associations entitled thereto, collectively, to recover in any court of competent jurisdiction the difference between the wages actually paid and said minimum wage or standard of wages so found and determined by said court in such order. It shall be the duty of all employers affected by the provisions of this act, during the pendency of any investigation brought under this act, or any litigation resulting therefrom, to keep an accurate account of all wages paid to all workers interested in said investigation or proceeding: *Provided*, That in case said order shall fix a wage or standard of wages which is lower than the wages theretofore paid in the industry, employment, utility or common carrier affected, then and in that event the employers shall have the same right to recover in the same manner as provided in this section with reference to the workers.

Sec. 24. With the consent of the governor, the judges of said Court of Industrial Relations are hereby authorized and empowered to make or cause to be made, within this state or elsewhere, such investigations and inquiries as to industrial conditions and relations as may be profitable or necessary for the purpose of familiarizing themselves with industrial problems such as may arise under the provisions of this act. All the expenses incurred in the performance of their official duties by the individual members of said court and by the employees and officers of

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said court, shall be paid by the state out of funds appropriated therefor by the legislature, but all warrants covering such expenses shall be approved by the governor of said state.

Sec. 25. The rights and remedies given and provided by this act shall be construed to be cumulative of all other laws in force in said state relating to the same matters, and this act shall not be interpreted as a repeal of any other act now existing in said state with reference to the same matters referred to in this act, except where the same may be inconsistent with the provisions of this act.

Sec. 26. The provisions of this act and all grants of power, authority and jurisdiction herein made to said Court of Industrial Relations shall be liberally construed and all incidental powers necessary to carry into effect the provisions of this act are hereby expressly granted to and conferred upon said Court of Industrial Relations.

Sec. 27. Annually and on or before January first of each year, said Court of Industrial Relations shall formulate and make a report of all its acts and proceedings, including a financial statement of expenses, and shall submit the same to the governor of this state for his information. All expenses incident to the conduct of the business of said Court of Industrial Relations shall be paid by the said court on warrants signed by its presiding judge and clerk, and countersigned by the governor and shall be paid out of funds appropriated therefor by the legislature. The said Court of Industrial Relations shall, on or before the convening of the legislature, make a detailed estimate of the probable expenses of conducting its business and proceedings for the ensuing two years and attach thereto a copy of the reports furnished the governor, all of which shall be submitted to the governor of the state and by him submitted to the legislature.

Sec. 28. If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court.

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Sec. 29. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 30. This act shall take effect and be in force from and after its publication in the official state paper.

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Supreme Court, U.S.
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No. 29,289.

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

No. 739.

THE CHAS. WOLFF PACKING COMPANY, *Plaintiff in Error,*

vs.

COURT OF INDUSTRIAL RELATIONS OF THE STATE OF KANSAS, *Defendant in Error.*

In Error to the Supreme Court of the State of Kansas.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

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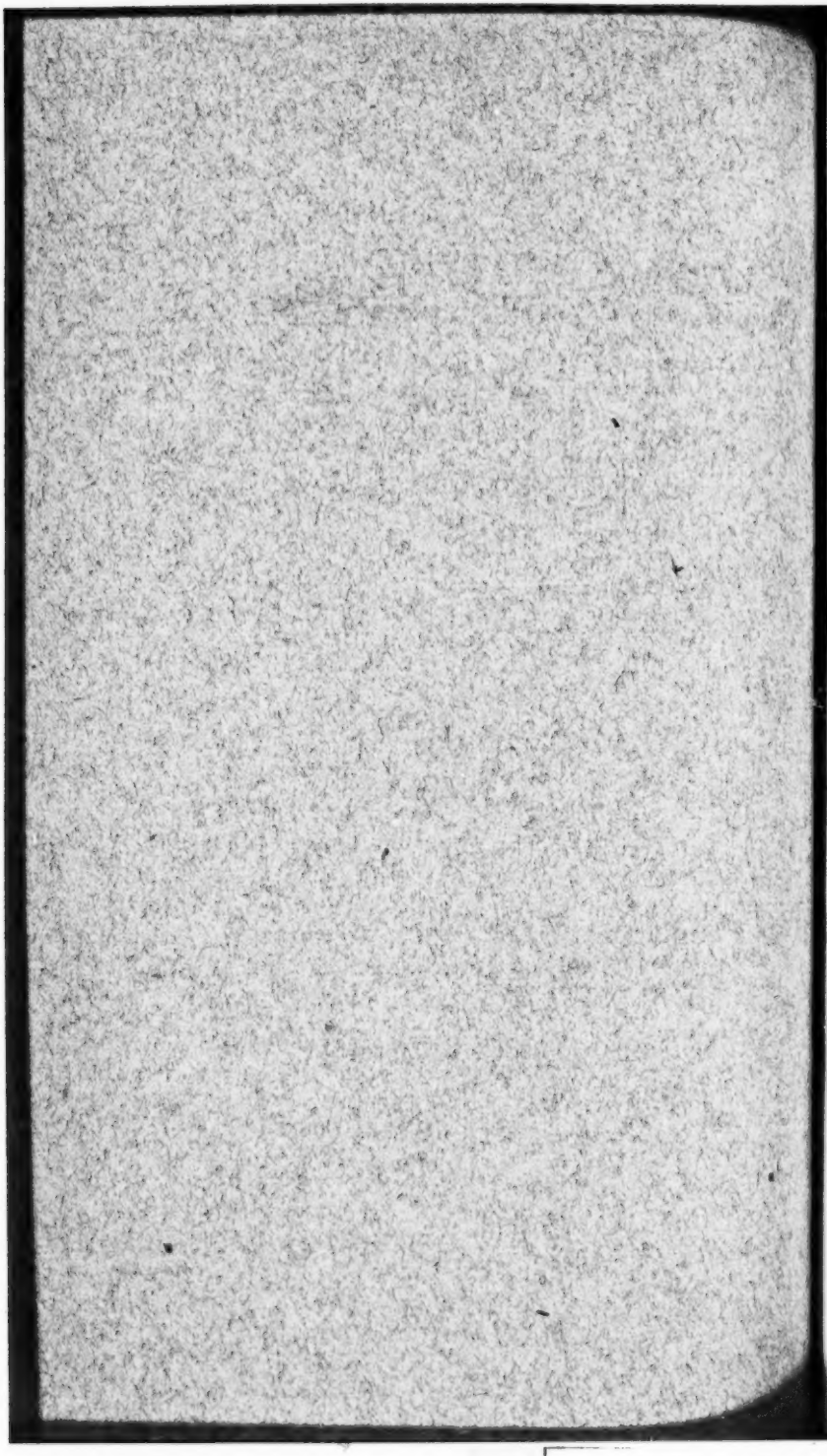

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In the Supreme Court
of the United States.

OCTOBER TERM, 1922.

No. 739.

THE CHAS. WOLFF PACKING COMPANY, *Plaintiff in Error,*

vs.

COURT OF INDUSTRIAL RELATIONS OF THE STATE OF KANSAS, *Defendant in Error.*

No. 29,289.

In Error to the Supreme Court of the State of Kansas.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

STATEMENT.

We controvert the statement of plaintiff in error because it does not show the relation of the order of the Court of Industrial Relations of May 2, 1921, to the packing industry in Kansas and other states. A survey of the packing industry as a whole is necessary to a proper understanding of this case. This court has held that it will take judicial notice of all matters of general knowledge. It should refer to the law that created the Industrial Court, and then to the emergency that caused the Industrial Court to act. The Packing Company was engaged in the manufacture of food products, as defined in section 3, paragraph 1 of the act (plaintiff in error's brief, 71). The packing industry under modern conditions is of vital importance to the food supply of the United States. In section

3 of the act it is determined and declared to be affected with a public interest. This legislative declaration is not conclusive on this court, but is entitled to great respect. (*Block v. Hirsh*, 256 U. S. 135, 41 S. Ct. 458, 16 A. L. R. 165.)

What is or is not a public use in a particular state is manifestly a matter respecting which local authority, legislative and judicial, has peculiar facilities for securing accurate information. (*Jones v. City of Portland*, 245 U. S. 217; *Green v. Frazier*, 253 U. S. 233.)

In plaintiff in error's brief (p. 26) is a quotation from the Howat case, 109 Kan. 376, which was affirmed by this court in 42 S. Ct. 277, —— U. S. ——; the Howat case related to fuel, but in said quotation reference is made to the great packing plants located in Kansas, and referred to the necessity for their regulation. The supreme court of Kansas decided in this case that plaintiff in error was engaged in a business affected with a public interest, so this court approaches the question in the manner described in *Jones v. City of Portland*, supra. But this question of whether the packing industry is affected with a public interest has been illuminated by the case of *Stafford v. Wallace*, 42 S. Ct. 397, 402, —— U. S. ——, in sustaining the Packers and Stockyards Act of 1921. In that case the stockyards of the country are referred to as great national public utilities and that they conduct a business affected by a public use of a national character and subject to national regulation; that it is a business within the power of regulation by legislative action was said there to need no discussion; that it had been settled since the case of *Munn v. Illinois*. That act regulates that part of the packing industry which relates to bringing in the live stock and the distribution of the meat products.

Congress did not regulate that part of the industry relating to hours of labor, wages and working conditions. That part of the business is left to the states, and Kansas has sought to regulate it

through the act of 1920, and the order of the Court of Industrial Relations complained of. If the bringing in of the live stock to the packing house and the distribution of the meat products constitute a business affected with a public interest, subject to regulation by congress because it constitutes interstate commerce, certainly that part of the business which is intrastate can be regulated by the states. Whatever may have been the situation forty or fifty years ago when the packing industry was conducted by local butchers, and the product of each plant was consumed in the community where the industry was carried on, the business to-day is of such national importance and so affects the food supply of the nation that it is no longer a private industry, but is affected with a public interest, as is shown by what has been done with relation to it by those in public authority.

The Kansas act has two definite purposes with relation to the conduct of the five classes of industries described in section 3: (1) the continuity and efficiency of operation in such industries as supply the necessaries of life; (2) the preservation of the public peace, health and welfare and the prevention of economic waste. This policy being declared by the state and sustained by its highest court will not be disturbed by this court provided the means employed to secure the desired commendable purposes are not clearly unreasonable and arbitrary.

The importance of continuous and efficient operation of the packing industry was recognized by the government during the war, and was of such public interest that the President appointed a mediation commission in December, 1917, for the appointment of an administrator to make decisions with regard to wages, hours, and conditions of employment, and to settle disputes between employers and employees in certain large establishments, which are referred to by this court in *Stafford v. Wallace*, as the Big Five Packers. United

States Circuit Judge Samuel Alschuler was appointed administrator. A number of awards were made by Judge Alschuler. The basic eight-hour day, being regarded as sanctioned by public policy, was established. Wages of employees in the packing houses were increased and a number of awards were made to improve the working conditions (Monthly Labor Review, July, 1920, p. 101). The packing industry was conducted from December, 1917, during the war, until January, 1921, under what was termed the Alschuler agreement. While these awards related to the business of the Big Five Packers only, yet the contracts with other packing companies followed the agreements with the Big Five Packers. The contract between the Wolff Packing Company and its employees of May 10, 1920 (R. 7), provided that it should remain in effect until January 1, 1921, subject to change only by Judge Alschuler ruling on the Big Five Packers at Kansas City, Kan. The Wolff Packing Company is a subsidiary company of the Allied Packers, Incorporated (R. 59), that company having plants in Buffalo, New York, Detroit, Wheeling, W. Va., Richmond, Macon, Ga., and several plants in Canada. The gross business of the Wolff Packing Company in 1920 was about $7,500,000; the total pay roll to its officers and employees in 1920 was over $500,000 (R. 60). The headquarters of the Allied Packers is in Chicago, and the operation of all plants is directed from the main office in that city (R. 122, 123). The Wolff Packing Company is but an instrument of the Allied Packers for carrying on their large and important business, and as their purchase of live stock and distribution of meat products are under the control of the national government through the Packers and Stockyards Act of 1921, so the production part of the business, part of which is located at Topeka, Kan., and is operated under the name of the Wolff Packing Company, is subject to regulation and control by the state in which it is located. The public interest of the packing company is thus clearly established.

The emergency which caused the Industrial Court to act in the Howat case is described on page 19 of the brief of plaintiff in error. There were two phases of that emergency: first, the danger to the fuel supply of the state; and second, the menace to the peace and public safety in that part of the state where the mines were located. The emergency with relation to the fuel supply was in 1919-1920. The emergency as to the food supply was in 1921. As is said in the quotation from the Howat case, in the brief of plaintiff in error (p. 27), the meat-packing industry effectually dominates not only the food supply, but another of the great industries of the state—the live-stock industry. The manufacture of meat products is shown to be on precarious ground. The Industrial Court, after the taking of testimony extending over seven days' time, decided that such an emergency existed in the packing industry. (R. 11; 20, par. 16.)

The commissioner appointed by the supreme court reported (R. 129) that the controversy affected the continuity of the packing industry in its relation to this plant, and that the Industrial Court was justified in assuming jurisdiction of the complaint. The supreme court of Kansas (R. 44, 45) held that the petition alleged that such an emergency existed as justified the Industrial Court in making an investigation, and after the evidence was all taken and considered, the supreme court found that the evidence established sufficient facts to give the Industrial Court authority to make proper orders thereunder (R. 146).

The census of 1920 shows that Kansas ranks second among the states in the size of its meat industry, and is only surpassed by Illinois. It surpasses Nebraska, Missouri, New York, Texas and every other state. All of the Big Five Packers have plants in Kansas. There are a number of independent plants at Kansas City, Kan., Wichita, Coffeyville, Arkansas City, Leavenworth, Topeka, and other places in Kansas. While the years 1917, '18, '19, '20 con-

stituted a period in which increases were made in wages under the Alschuler awards, which formed the basis of contracts between other packers and their employees, the year 1921 opened under different conditions. The wages paid by the Big Five Packers under the Alschuler agreement were higher than those paid by the Wolff Packing Company. The basic day and hours of labor were the same, and are set out in the contract of May 10, 1920, which expired on January 1, 1921 (R. 7). While this company was not a party to the Alschuler agreement, the terms and conditions under which the work was performed by the Big Five Packers were closely followed by this company in its contract. E. W. Jimmerson (R. 99), district president of the Amalgamated Meat Cutters and Butcher Workmen of North America, describes the relation which employees of the Wolff Packing Company bore to the plants working under the Alschuler agreement. They belonged to the same organization, and what affected one affected the other. Early in 1921 there was a determination among the Big Five Packers that wages should be reduced and that the Alschuler agreement should be terminated. The Wolff Packing Company refused to extend the agreement of May 10, 1920, and on January 14 posted notice to its employees of a cut in wages, ranging from 7½ cents to 15 cents per hour, effective January 17. The basic day's work under the agreement was eight hours, with guaranteed time of forty hours per week, and overtime at the rate of time and a half after eight hours. Under the notice, all allowances for overtime and all guarantees of stated time per week were abrogated by the company, and no basic day was provided. The controversy between the Wolff Packing Company and its employees was brought to a crisis somewhat earlier than in the industry generally throughout the United States. On February 28 the Big Five Packers notified Judge Alschuler that his services were no longer needed in settling labor disputes. On March 5, packing-house

employees were called to a national conference in Omaha to plan resistance to any proposal of wage cut or return to the ten-hour working day, which was suspected might follow the packers' withdrawal from the arbitration agreement of 1917. On March 9 the workers at the Omaha conference appealed to President Harding to try to prevent wage cuts. They threatened to strike, and made charges against the packers. The Omaha conference authorized the Meat Cutters' Union to take a strike vote. On March 12, Secretary Davis, of the Labor Department, offered his services in arbitration. This caused the union laborers to defer the strike vote. Packers and employees accepted Secretary Davis' mediation offer. The international officers of ten packing-plant unions affiliated with the American Federation of Labor pledged support to the Amalgamated Meat Cutters in the strike. On March 20, representatives of union packing-house employees went to Washington to confer with Secretary Davis and the packers. On March 22, Secretaries Davis, Hoover and Wallace conferred with packers and workers representing the allied unions. The employees agreed to accept a cut in wages, and the packers agreed to extend the war-time mediation plan. The terms of the compromise by which packers cut wages, but reserved the basic eight-hour day and arbitration agreements, were agreed to on March 24, three days after the temporary order in this case was made (R. 11). President Harding congratulated the joint committee on the peaceable settlement. On April 1, twelve independent firms accepted the agreement reached by the Big Five Packers and workers; and on April 5, fifty-five packing firms adopted the same. Both parties agreed to the conditions with the understanding that Judge Alschuler should be requested to remain as administrator until September 15.

The Wolff Packing Company employees took a strike vote early in January, 1921, which was referred to E. W. Jimmerson, dis-

trict president, who advised the local union to abide by the state law, and instructed the committee of employees to present their complaint to the Court of Industrial Relations (R. 100, 119). The employees were directed by the notice of the Wolff Packing Company of January 14 to consult the foremen of the plant for new rates of pay that would be effective beginning January 17. This was the response of the packing company to the demand of its employees made about January 1 for a renewal of the contract of 1920 (R. 120). Since January 17 there has been no extra pay for overtime (R. 121). The conditions in the Wolff Packing Company plant during the months of January, February and March were similar to the conditions in other plants throughout the country, and the Wolff Packing Company employees took part in the nation-wide strike vote of March 10 (R. 100), which vote resulted in 225 to one in favor of a strike (R. 101). This was eleven days before the temporary order in this case (R. 11). The controversy in the plants generally was composed by the agreement made between the packers and their employees by Secretaries Davis, Hoover and Wallace (R. 100). The adjustment made by them continued until September 15, when the Alschuler agreement terminated. After September 15 the packers decided to reduce wages, and notified their employees accordingly. This brought on the strike of December, 1921, but the employees of the Wolff Packing Company accepted the orders of the Industrial Court of March 21 and May 2, 1921, and have taken no part in any strike since.

When these three cabinet officers in March, 1921, were endeavoring, under direction of the President, to adjust the controversy between the Big Five Packers and their employees, and thus prevent a strike, the evidence in this case had just been taken before the Industrial Court. E. W. Jimmerson, district president of the union, in his evidence before the court given in March, 1921 (R. 190), said

that the eight-hour day which the company was trying to abolish was the principal thing that the employees demanded. Packing-house employees never enjoyed that until the Alschuler agreement. They enjoyed it in 1886 for a short time, but not until the Alschuler award was made did they have it again. He then said to counsel for the packing company:

> "That was May 5, 1918, the eight-hour day went into effect, and I want to tell you, and be frank with you and the employers you represent, that our organization will go down in defeat before we sacrifice one minute of that eight-hour working day."

This statement meant that a national strike would follow an attempt to abolish the eight-hour day. Was there an emergency that threatened the public welfare and the public peace in Kansas? Was there an emergency that the Industrial Court had reasonable grounds to fear would affect the food supply of Kansas and interfere with its great live-stock industry? Was a strike probable and impending? It was dealing only with one packing house in making this order, but the labor situation affected all packing houses in the state. There was unrest among the employees of all of them. The fact that the Big Five had posted notice reducing wages and abolishing the eight-hour day was brought to the attention of the Industrial Court during the trial (R. 199). The state had gone through the coal strike in 1920, when troops were in the coal fields, when there was distress and suffering among the people for lack of fuel. The repetition of such condition the Industrial Court was seeking to avoid in 1921. There was a great and dangerous public emergency which threatened not only Kansas, but the nation.

In the Swift case (25 Sup. Ct. 276, 196 U. S. 375) this court said that where there was intent to bring about a certain result, and there was a dangerous probability that it would happen, that the

law directs itself against the dangerous probability as well as against the completed result. The Industrial Court made the order on May 2, 1921, while the truce was on between the Big Five Packers and their employees, which was to end on September 15. There was a dangerous probability of a strike in this plant, which would spread to other plants. The representatives of the federal government acted in the belief that there was a great national emergency. The Industrial Court acted on a like belief.

On October 14, the majority of employees in Omaha, East St. Louis, Milwaukee and Fort Worth voted to strike; the employees in Chicago plants were also preparing to strike; on November 16 the Iowa National Guard was ordered to strike duty in Ottumwa; on December 1 employees of packing houses in East St. Louis voted a strike; 12,000 employees were out in Chicago; the strike was enjoined in Colorado until the State Industrial Commission investigated and reported; violence was reported in St. Paul; on December 5 the employees struck at Chicago, Kansas City and other western points; on December 7 one was killed and fifty hurt in the strike riots at Chicago; on December 8 one was shot and 150 hurt in the strike riots there; on December 11 in Fort Worth, Tex., a Negro strike breaker who had seriously wounded two union pickets was lynched; on December 13, 4,000 employees in New York packing houses quit suddenly, cutting off that city's meat supply; the public was urged to buy poultry; on December 15 the cutters and salesmen in New York city retail shops notified employers that they would refuse to handle products of Big Five Packers; on December 17 the strikers appealed to Secretary Davis for mediation in the strike; on December 18 the Labor Department appointed commissioners to mediate, and unions called out more men; on December 20, two men were killed in rioting in Sioux City, and there were disorders in Omaha; injunction proceedings were brought in all the packing-

house centers to restrain the strikers; on December 27 strike sympathizers defied police in Omaha; on December 28 a Negro strike leader who intimidated packing-house employees in Kansas City was arrested on the charge of assault with a deadly weapon; on December 30, 1,500 pounds of meat owned by the United Dressed Meat Company of New York were spoiled by strikers, who poured kerosene over it ad.

The packing industry was maintained in peace from 1917 to September 16, 1921, under the Alschuler agreement, but when this agreement ended the general strike occurred. The above events in 1921 show that there was uneasiness, controversies, strikes, riots, calling out of national guards and bloodshed accompanying the controversies between employers and employees in the packing industry as to wages, hours of labor and working conditions. The Industrial Court, believing that an emergency existed, attempted by this order of May 2, 1921, to avert and prevent such a disturbance of the public peace and the public welfare as occurred in other states. Its order was neither clearly unreasonable nor arbitrary, and did have a relation to the purpose of preventing a strike in this industry.

Through all the above-described disturbances the plant of plaintiff in error continued to operate, and no strike occurred. Its employees relied on this order being eventually sustained, and stuck to their jobs.

The Packing Company contends that the order of the Industrial Court confiscates its property, because in 1920 it claims to have lost $106,000. The commissioner and the supreme court both found that the cause of this loss was not established. A great part of it they said arose from the condition of the industry and general market conditions. The public statements of the Big Five Packers show that while they made over $55,000,000 in 1917, $50,000,000 in

1918, and $13,000,000 in 1919, they lost over $55,000,000 in 1920 and $58,000,000 in 1921. During part of 1917 and all of 1918, 1919, 1920, and the greater part of 1921, the Alschuler agreement was in effect. The Wolff Packing Company's loss of 1920 and 1921 was evidently due to the general shrinkage in the value of products.

This case will resolve into three propositions:

I. Is the business of the Wolff Packing Company affected with a public interest?

II. Was there an emergency which authorized the Industrial Court to act on the complaint filed by the employees of the company?

III. Was the order of the Industrial Court confiscatory?

The defendant in error contends that the first two questions should be answered in the affirmative and the third in the negative, and in the following brief will refer to the evidence and the authorities in support of that contention.

The public welfare of Kansas would certainly be promoted by (*a*) the continuous and efficient operation of the Wolff Packing Company's and other packing plants in Kansas, thus insuring adequate food supply and furnishing a market for the live-stock industry and preventing economic waste; (*b*) the prevention of a strike in this and other packing plants in Kansas, thus preserving the public peace and safety.

Unless the order of May 2, 1921, was clearly unreasonable and arbitrary and had no substantial relation to the above objects, then the order must stand, approved as it has been by the highest court in the state.

The most significant thing in the brief of the plaintiff in error is what it omits, not what it contains.

1. It omits all reference to the temporary nature of the order

of the Industrial Court. It does not even mention the fact that the statute provides that—

> "SEC. 8. . . . If either party to such controversy shall in good faith comply with any order of said Court of Industrial Relations for a period of sixty days or more, and shall find said order unjust, unreasonable or impracticable, said party may apply to said Court of Industrial Relations for a modification thereof, and said Court of Industrial Relations shall hear and determine said application and make findings and orders in like manner and with like effect as originally. In such case the evidence taken and submitted in the original hearing may be considered."

2. The brief of the plaintiff in error makes no reference to nation-wide conditions in the packing industry at the time the order complained of was made, neither does it mention the fact that the workmen complaining were members of a nation-wide union which was taking a strike vote at that time, nor does it mention the fact that at the time of the making of the temporary order the government of the United States, through the Secretaries of Labor, of Agriculture and of Commerce, under the direction of the President, were endeavoring to avert a nation-wide strike. Plaintiff in error seems to be endeavoring to place a high wall around the Wolff Packing Company's plant and to isolate it and its activities completely, and thus treat the Wolff Packing Company as a hermit in the commercial world.

THE EVIDENCE.

The Wolff Packing Company's Plant as a Market for Cattle and Hogs.

The Wolff Packing Company is located at Topeka, Kan. It purchases about 125,000 hogs a year and 7,500 cattle, affording a more advantageous market than Kansas City for the farmers and stock raisers in the vicinity (R. 183-184, 59, 73). The plant has a weekly capacity of about 4,500 hogs and 300 cattle (R. 54, 55). The average weekly kill is about 200 cattle and from 3,000 to 4,500 hogs. The plant covers about two city blocks and is modern in every respect. The sales run from $3,000,000 to over $7,000,000 per year (R. 197). The company has its own stockyards and feeding yards, and by an understanding with shippers, to a certain extent, can control the amount of live stock shipped to the plant, except for the wagon receipts of hogs, which constitute about 25 per cent to 35 per cent of the daily receipts (R. 59, 215). Between January 17, 1921, and April 30, 1921, a period of fifteen weeks, 42,980 hogs were killed at the plant (R. 95). At the time of the investigation before the Industrial Court the prices paid by the Wolff Packing Company for live stock were at about the prewar level (R. 205). Meat prices were higher than in 1913 and 1914 (R. 205). The company does a wholesale business in packing-house products, selling its goods throughout the United States and having some export business, but a relatively small per cent of its sales are in Kansas (R. 204, 205). Its principal market is in the West and Southwest. Among the Kansas customers of the Wolff Packing Company are three of the state penal, charitable and educational institutions, which buy in large quantities (R. 196). The pleadings of the Packing Company show that the Packing Company's business is extensive; that it

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furnishes an open, free market for live stock, and claim that any interruption thereof will result in hardship and loss to the farmers and live-stock producers of the state of Kansas (R. 11, 27), and in other places the Packing Company's pleadings admit that the Industrial Court's allegations to the same effect are correct (R. 25, 1). The Wolff Packing Company also handles some ice, by-products of the packing industry, and runs a cold-storage plant (R. 59). Through its sales department it keeps in touch with the Chicago and Kansas City markets and fixes its prices accordingly (R. 73).

Other Packing Houses in Kansas.

There are many other packing companies in the state of Kansas, the employees of which do substantially the same kind of work as the employees of the Wolff Packing Company (R. 29). Some of the other packing houses in Kansas are at Kansas City and Wichita (R. 188, 189, 190, 205), and at Leavenworth (R. 208). The large packing houses in the state of Kansas operated under a contract known as the Alschuler agreement (R. 100, 101), but the schedule of wages paid by the Wolff Packing Company, even under the contract of May 10, 1920, was lower than the schedule paid under the Alschuler agreement (R. 200).

The Strike at the Plant in 1918.

In 1918 a strike over working conditions and wages occurred at the plant of the Wolff Packing Company and lasted from six to nine weeks (R. 197, 198, 110, 111, 113, 116). During that period, however, the plant did not entirely stop running (R. 116). The Industrial Court in its opinion found that there never had been any serious controversy between the management and the employees until this present controversy in 1921 (R. 16).

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The Conditions Early in 1921.

There were about 300 employees of the Wolff Packing Company (R. 1, 2, par. 2; 25, par. 6).

Early in January, 1921, the Wolff Packing Company refused to sign the new form of contract prepared by the employees, cut the wages, and took away the employees' privileges, such as the eight-hour day and the guaranty of forty hours of work per week (R. 107, 108, 185, 192). The company at the hearing gave as a reason for the cut and the longer hours that it had been operating at a loss. Some of the employees quit work because of the new wage schedule instituted by the company on January 17, 1921 (R. 186, 187). In January, 1921, the packing industry throughout the United States was, as a whole, at peace except for the Wolff Packing Company and two or three others. In March, 1921, however, trouble started, as on February 28—the packers repudiated the war-time agreement. Thereafter, by overwhelming vote, the packing-house workers throughout the United States, including those of the Wolff Packing Company, voted to strike. The danger of a strike at the Cudahy plant at Wichita, Kan., on account of a reduction of wages, was referred to by Presiding Judge Huggins at the hearing (R. 199). The difficulty was settled following a conference with the President and the Secretaries of Labor and of Commerce, by the packers agreeing to continue the war-time agreement until September 15, 1921 (R. 49, 50, 99, 100, 101, 102). Trouble started in the Wolff Packing Company's plant in January, 1921, when, following the announcement of the company's new schedule of wages, a strike vote was taken among the members of the Amalgamated Meat Cutters and Butcher Workmen of North America employed by the Wolff Packing Company. The strike vote was referred to the district president of the union, E. W. Jimmerson, and he told the local union to abide by the state law, and instructed a committee to present its com-

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plaint to the Industrial Court (R. 99, 100, 110, 111). At a meeting of the employees a resolution to submit the dispute to the Industrial Court was unanimously passed (R. 193, 194, 104, 111 and 112). There was general dissatisfaction among the employees with the hours of work proposed by the company, and with the smallness of the wage (R. 112, 113). Various employees testified as to dissatisfaction over the cut in wages and the loss of the eight-hour day (R. 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 186, 187, 190, 191, 194, 195). Since the first of the year the employees were severely driven by their foremen to do more work (R. 103, 104, 110, 185, 186, 187, 188, 191). The union of packing employees would go down in defeat before yielding the eight-hour day (R. 189, 190). The union included employees of the Big Five packing companies and of the Wolff Packing Company (R. 101, 102).

The contract which the employees had proposed to the Wolff Packing Company about January 1, 1921, was practically the same as that in force during the previous year (R. 212). The action of the Wolff Packing Company in not entering into the agreement which the employees proposed was upon the responsibility of Charles Wolff, president of the Wolff Packing Company, and C. W. Sheehan, its production superintendent (R. 212-213). The answer of the Wolff Packing Company admitted the controversy as to wages subsequent to January 1, 1921 (R. 9). The Industrial Court (R. 20, 22, 119) and also the commissioner (R. 146) found, and the supreme court of Kansas sustained that finding, that at the time the controversy between the Wolff Packing Company and its employees was brought to the Industrial Court an emergency existed which warranted action by that court (R. 145, 146).

LOSE IN CENTER

The Working Conditions.

The temperature of the rooms in which some employees have to work varied from 30 degrees to 120 degrees (R. 194, 196.) Some work in damp places where they have to wear rubber boots (R. 194, 195, 196). Women workers who go from the trimming room to the head room go from a temperature of 48 degrees to one of 110 degrees. Such changing conditions cause them to have rheumatism (R. 106, 196). Twenty-five per cent of the men employees go from low-temperature to high-temperature rooms, where the variation is from 30 or 32 degrees to 125 or 130 degrees. This gives them rheumatism (R. 196, 197). Because of the wet floors and damp working conditions many of the employees must wear waterproof clothing (R. 99). The atmosphere is in general disagreeable, the dressing rooms dirty, and with no ventilation to speak of (R. 110, 113). The Industrial Court in its temporary findings and order of March 1, 1921, found that the working conditions in the Wolff Packing Company's plant were disagreeable, the work strenuous, and when long continued was detrimental to health (R. 11).

In its opinion of May 2 the Industrial Court found:

> "One of the principal contentions in the evidence is the question of the eight-hour basic day. Upon this point the evidence shows that many workers, especially those engaged in what is called the killing, cutting and trimming departments, are in the very nature of the business compelled to work under conditions which are disagreeable and are not conducive to the health of the workers. Some of these workers are standing over scalding vats in rooms that are more or less filled with steam from the hot water; others are working under conditions which require them to wear rubber boots and rubber clothing to protect themselves from blood, water and steam; others are handling the entrails and the different parts of the carcasses of the slaughtered animals and using water in the cleansing process. While the evidence shows to the entire satisfaction of the court that the work in this plant is done under the best possible conditions of cleanliness, nevertheless there is about the work that which

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not only requires strenuous physical exertion, but is also disagreeable and more or less unhealthful in other respects." (R. 16.)

The Contracts for and Schedule of Wages.

Following the strike of 1918 the Wolf Packing Company had a contract with its employees fixing the scale of wages for the remainder of that year. It had a contract for a like purpose made May 10, 1920, for that year, and one for 1919, which Charles Wolff, the president of the Wolff Packing Company, testified was abrogated, by whom it does not appear (R. 197, 198). The wage schedule in the contract of May 10, 1920, was 10 to 15 cents an hour lower than that paid by the Big Five Packers at Kansas City, Kan. (R. 189-200). The court accepted the testimony of Mr. Wolff as to the pay roll (R. 49). It provided for a basic eight-hour day beyond which time and a half for overtime was to be paid; but on two days in each week that rate of overtime applied only after the ninth hour. Time worked over forty-eight hours a week was to be paid for at the rate of time and a half (R. 21). The Packing Company at the hearing offered to institute a forty-eight hour week, with time and a half for overtime, under certain conditions stated, but which were not accepted (R. 117). The president of the Wolff Packing Company admitted that the wage rate fixed by the company January 17, 1921, was 10.25 per cent lower than the rate of May 10, 1920 (R. 209, 210). This schedule of rates of January 17, 1921, was fixed by the company alone, without agreement with its employees (R. 63, 81).

For the period of fifteen weeks from January 17 to April 30, 1921, the pay roll of the plant under the wages fixed by the Packing Company's order, effective January 17, was a total of $97,841.26. If the Industrial Court's order had been enforced during that period the total increase of the pay roll would have been $7,099.64, or

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about 7.2 per cent of the actual pay roll. Of such increase, $4,733.10, or about 4.8 per cent of the actual pay roll, would have been due to the payment of time and one-half for overtime, and $2,366.54, or 2.4 per cent of the actual pay roll, would have been due to the direct increase in the hourly wage (R. 246, 247, 248, respondent's Ex. D; commissioner's finding No. 7, R. 122). Of the 10.25 per cent reduction in the plant wages, effective January 17, 1921, the Industrial Court's order would have restored 2.4 per cent by the increased rate per hour, aside from the increase resulting from time and one-half for overtime. In fixing the new schedule of rates by its temporary order, the Industrial Court took into consideration all possible and conceivable factors, and especially the fact that this order was for a trial period of sixty days (R. 47, 48, 49). The Industrial Court did not to any great extent raise the wages (R. 48). In its opinion it stated that the wages set out in its schedule were in purchasing power equivalent to the wages paid under the contract of (May 10) 1920 (R. 20, par. 15).

The Wages Paid.

The new scale of wages instituted by the Wolff Packing Company, effective January 17, 1920, did not operate uniformly on all employees. The wages of all were cut, but those of some more than others. Practically all were cut, and the reduction varied from 8½ cents, 10 cents and 15 cents to 40 cents per hour (R. 184, 185, 187, 192, 193, 194, 195, 196, 102, 103, 104, 106, 107, 108, 109, 110, 112, 113). The other packers of the state operating under the Alschuler agreement paid materially higher wages (R. 188). The wages paid by the Wolff Packing Company under the May 10, 1920, schedule averaged 10 cents to 15 cents an hour less than those paid in other packing centers of America (R. 189, 190). Women often receive less wages than men for the same work, but the wages of the women were also cut in January, 1921 (R. 194, 195).

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The Cost of Living.

A number of witnesses for the complainants testified that the prices charged by retail merchants, landlords, etc., for the necessities of life had not materially changed between January, 1920, and January, 1921. Such of these witnesses as were workers for the Packing Company testified they had difficulty in subsisting upon the wage paid under the contract of 1920, and could not supply themselves and their families with a sufficient quantity of the necessities of life upon the wage fixed by the Packing Company in January, 1921 (R. 215).

Some witnesses for the Packing Company testified that there had been a decline in the retail prices of the necessities of life at Topeka between January, 1920, and January, 1921, which they variously estimated at from 10 per cent to 30 per cent (R. 216).

Hours and Overtime.

Beginning January 17, 1921, the eight-hour privilege was taken away from the employees of the Wolff Packing Company, so that thereafter they often worked ten or twelve hours (R. 184, 185). Also time and a half for overtime was abolished, and only the regular rates per hour were paid. The result of the reduced pay and the reduced work was that some of the employees quit (R. 186, 187, 188). The employees have received no extra pay for overtime since the new arrangement went into effect (R. 107, 108, 109, 195, 196).

The Alschuler eight-hour day, which affected the entire packing industry throughout the United States, went into effect May 5, 1918. Before that time there had been no eight-hour day in the packing industry, but the work had been for ten, eleven and twelve hours a day (R. 190). The dispute between the Wolff Packing Company and its employees was concerning the basic eight-hour day and wages (R. 100, 101).

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Various employees testified that since the new wage and working schedule instituted January 17, 1921, by the Wolff Packing Company, they had to work from nine, ten to eleven and twelve hours, some of them seven days a week. They found such hours and the wages paid very unsatisfactory (R. 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 184, 185, 190, 191, 192, 193, 194, 195, 196). Since January 17, 1921, some employees have had to work from ten to thirteen hours (R. 111, 112, 113).

In the discussion on the question of the eight-hour day and time and a half for overtime counsel for the Wolff Packing Company stated:

> "I think no intelligent man in this country would say a man ought to work more than eight hours. He has probably reached his maximum." (R. 193.)

According to the claim of the company, overtime was a burden to it, as a number of employees would shirk in order to get overtime (R. 79).

Within certain limits the company could control the killing from day to day (R. 55, 214).

The workmen in the Wolff Packing Company were compelled to change their street clothes to their working clothes in the morning, and back again in the evening, and do their washing and cleaning up on their own time (R. 99). It was found by the Industrial Court that this process required from thirty to forty-five and sixty minutes (R. 12, 17). It found:

> "The evidence also shows that the workers in these departments are compelled when they arrive at the plant in the morning to take off their ordinary clothing and to put on clothing which will protect them from the dampness and from direct contact with the carcasses of the slaughtered animals and which will meet the requirements of the federal regulations in such matters; and before they leave at night they must, of course, change back, wash themselves, and prepare to return to their homes. Now this process, which occupies the time of the em-

ployees from thirty minutes to an hour per day, is done on the employees' own time; the hourly wage does not begin until the employee gets to his place of duty, and it ends when he leaves that place of duty after the day's work is done. To do an eight-hour day's work, therefore, workers engaged in this occupation are required to be inside the plant at least eight and one-half hours and possibly nine hours per day." (R. 17.)

In the lard room there was more work during the six months previous to the hearing before the commissioner in September, 1921, than during the six months previous to that time, and at that time all the men in the lard room were putting in extra hours (R. 116). The Packing Company, through its attorney, proposed at the first hearing to pay time and a half for overtime above forty-eight hours a week, but refused to consent to a guaranty of hours a week (R. 117). The temporary finding and order of the Industrial Court of March 21, 1921, after the hearing, provided that, pending the final determination, the employees be placed upon an eight-hour day, that time and one-fourth be paid for the ninth hour, and time and one-half thereafter (R. 12).

The Industrial Court found that this was an employment in which eight hours, as a general rule, should constitute a day's work (R. 17), and it prescribed a rate of wages based on an eight-hour day and forty-eight-hour week (R. 18, 19). It allowed time and a half for overtime above nine hours on two days in a week, and over eight hours on the remaining days, but in any case such pay for overtime was allowed for time over forty-eight hours a week (R. 21, par. 3; 22, par. 13; 23, par. 19). The commissioner found the company could only to a limited extent control the delivery of livestock to it; that it could not practically control the hours of work, and that the basic eight-hour day and time and a half for overtime, in the court's order, was a wage provision rather than a working condition (R. 151). This finding of the commissioner was not ap-

proved by the supreme court of the state of Kansas, which in its final opinion, said:

> "The defendant should be compelled to pay the wages fixed in the order made by the Court of Industrial Relations and should be compelled to establish the hours of labor there fixed, and should look elsewhere to recoup its losses and find the means of operating its plant at a profit." (R. 151).

The Financial History of the Plant.

The Wolff Packing Company has a paid-up capital stock of $600,000 (R. 197, 198). Ninety per cent of this is owned by the Allied Packers, a Delaware corporation, with main offices in Chicago, Ill. (R. 200, 201). It acquired control in October, 1919, at which time it paid for its stock in the Wolff Packing Company a premium of $30 per share (R. 66, 200, 201). According to the appraisal of the American Appraisal Company, made as of December 12, 1919, the value of the plant is around $1,000,000 (R. 209, 210). However, Mr. Wolff, its president, testified at the hearing before the Industrial Court that the capital stock of $600,000 represented the fair valuation of the plant and equipment, exclusive of the inventory (R. 65). He testified it sustained a deficit of about $100,000 in the year ending October 30, 1920, and also in 1919 (R. 55, 197, 198), and that the company made a profit in 1913 and thence to the middle of 1917. The business showed a loss in 1917, 1918, 1919 and 1920. There were some profits in the period from October, 1919, to May, 1920 (R. 209, 205). While the Wolff Packing Company is operated and financed as a separate entity, it is controlled in its operations by the Allied Packers, Incorporated (R. 66). It is financed almost wholly by the central office of the Allied Packers, which borrows and supplies the funds necessary for its operation (R. 200, 201). The Wolff Packing Company has no bonded indebtedness, but the Allied Packers has, and a certain portion of the interest on such bonded debt is charged to the Wolff Packing Company (R. 204, 205). This charge is apportioned on the basis of the valuation of the

property of the Wolff Company (R. 67). On all money which the Allied Packers furnishes the Wolff Packing Company, that company is charged the market rate of interest (R. 201, 210). The Wolff Packing Company carries two interest accounts with the Allied Packers, one for working capital furnished by the Allied Packers, and one for bond-interest charges on the Wolff Packing Company's proportion of the Allied Packers' bonded indebtedness (R. 60). The working capital required to operate the plant varies from $400,000 to over $1,000,000 (R. 204, 205). The Wolff Packing Company also pays a proportion of the administrative expense of the central office of the Allied Packers, which proportion is determined entirely by the Allied Packers (R. 64). The production and sales of the Packing Company in 1920 was greater than in preceding years. The Allied Packers owns plants at Boston, Wheeling, W. Va., Macon, Ga., Richmond, Detroit, Buffalo, and several points in Canada (R. 200, 201). There were other losses in the Allied Packers plants in 1919, as well as in the Topeka plant (R. 59). Counsel for the Allied Packers admitted that the revenue of the Wolff Packing Company had been called upon to contribute to the disproportionate losses suffered by the Macon, Ga., plant of the Allied Packers (R. 203).

Practically the only change in the capacity of the plant in the last five or six years was the construction of a hog cooler of 750 tons capacity in 1920 (R. 204, 205). This may have been in January and February, 1920 (R. 66).

The depreciation on the plant of the Wolff Packing Company is charged off under the direction of the Allied Packers on the valuation by the American Appraisal Company at the rate of $6,000 per month (R. 62). The reserve for depreciation is calculated upon the reproduction value, based on the appraisal by the American Appraisal Company (R. 75). The decrease in wages in January, 1921,

according to the testimony of Mr. Wolff, amounts to 10¼ per cent, which affords the company an annual saving of $42,000, or approximately 7 per cent on the capital stock of $600,000 (R. 210). The accounts of the Packing Company were in a deplorable condition (R. 90, 91).

Women Employees.

There were in all about twelve women employees in the Wolff Packing Company plant. The names of some of them and their testimony may be found at record, 187, 191, 192, 194, 195; and see record, 199. Counsel for the respondent agreed in open court that women performing the same work should receive the same wages as men (R. 195).

The opinion and order of the Industrial Court was that women should receive the same wages as men engaged in the same class and kind of work (par. 9, R. 22). The commissioner found that part of the Court's order reasonable, and that the increased cost to the Wolff Packing Company of the enforcement of that portion of the order of the Court of Industrial Relations would be insignificant. (Par. 12, R. 125, 126).

The Appendix.

In the appendix of this brief is contained:

(A) Statistics concerning the live-stock production and meat-packing industry of Kansas and some other states.

(B) An account of strikes in the packing industry in 1886 and 1904.

(C) The wage schedule in controversy which was ordered by the Industrial Court May 2, to take effect as of May 1, 1921, but which was inadvertently omitted from the record; and

(D) A citation of authority for awards of Judge Alschuler, which awards are referred to in this brief.

ARGUMENT.

Public Interest.

In determining the constitutionality of this statute, this court will of course accept the interpretation of it as construed by the highest court in the state of Kansas. (*Farncomb v. Denver*, 252 U. S. 7, 40 S. Ct. 271.)

Findings of fact as made by the supreme court of the state will be accepted by this court, unless unsupported by any evidence. (*Smiley v. Kan.*, 196 U. S. 447, 25 S. Ct. 289; *M. K. & T. R. Co. v. Haber*, 169 U. S. 613.)

The state's power is not limited to the suppression of what is offensive, disorderly or unsanitary. It extends to the promotion of public convenience or general prosperity. It extends to so dealing with the conditions which exist in the state as to bring out of them the greatest welfare of its people. (*Bacon v. Walker*, 204 U. S. 311, 27 S. Ct. 289.)

A decision of the highest court of the state, declaring a use to be public in its nature, will be accepted by this court unless clearly not well founded.

> "The attitude of this court towards state legislation purporting to be passed in the public interest, and so declared to be by the decision of the court of last resort of the state passing the act, has often been declared. While the ultimate authority to determine the validity of legislation under the fourteenth amendment is vested in this court, local conditions are of such varying character that what is or is not a public use in a particular state is manifestly a matter respecting which local authority, legislative and judicial, has peculiar facilities for securing accurate information. In that view the judgment of the highest court of the state upon what should be deemed a public use in a particular state is entitled to the highest respect. (*Hairston v. Danville & Western Ry. Co.*, 208 U. S.

598, 607, 28 Sup. Ct. 331, 52 L. Ed. 637, 13 Ann. Cas. 1008.) In *Union Lime Co. v. Chicago & N. W. Ry. Co.*, 233 U. S. 211, 34 Sup. Ct. 522, 58 L. Ed. 924, this court declared that a decision of the highest court of the state declaring a use to be public in its nature would be accepted unless clearly not well founded."

Jones v. City of Portland, 245 U. S. 217, 38 Supt. Ct. 112.)

This statement was reiterated in *Green v. Frazier*, 253 U. S. 233, 40 Sup. Ct. 499, where the laws of North Dakota, establishing a bank operated by the state, providing for the engagement by the state in the business of manufacturing and marketing farm products and for the establishment of a warehouse, elevator and flour-mill system operated by the state, and declaring the purpose of the state to engage in the business of providing homes for its residents and to operate a home building association, under the conditions existing in the state of North Dakota as described by the highest court in that state, were declared constitutional and the uses specified public in their nature.

It has been held by this court that a state statute is valid which permitted the condemnation of land for the construction of an irrigation ditch to supply water for the uses of one person (*Clark v. Nash*, 198 U. S. 361, 49 L. Ed. 1085, 25 Sup. Ct. Rep. 676); and that a state may authorize a condemnation of a right of way for an aërial or bucket line to serve in the operation of a gold mine (*Strickley v. Hightland Boy Gold Mining Company*, 200 U. S. 527, 50 L. Ed. 581, 26 Sup. Ct. Rep. 301). Where a condemnation of land was authorized by the state for the purpose of the construction of a water-power plant it has been said:

"The inadequacy of use by the general public as a universal test is established." (*Mount Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U. S. 32, 60 L. Ed. 511).

The fire insurance business may be regulated as affected with a public interest. (*German Alliance Insurance Co. v. Lewis*, 233 U. S. 389, 58 L. Ed. 1011; *La Tourette v. McMaster*, 248 U. S. 465, 63 L. Ed. 362.)

And so may the banking business. (*Noble State Bank v. Haskell*, 219 U. S., 104, 113, 55 L. Ed. 112, 117.)

The charges of a public stockyards company may be regulated. (*Cotting v. Godard*, 183 U. S. 79, 84, 85; 46 L. Ed. 92, 99.)

At the bottom of page 50 of plaintiff in error's brief is found the following statement:

> "It is not within the province of the state to provide its citizens with food, fuel or clothing. That is the private concern of the individual himself."

This statement, as applied to the power of the state, shows a disregard of the decisions of this court. In *Jones v. City of Portland*, 245 U. S. 217, supra, this court held that the business of furnishing fuel to the citizens of Portland, Maine, was a public use, and that it was within the province of the state to provide by statute for the establishment of municipal fuel yards. In *Green v. Frazier*, 253 U. S. 233, supra, it was held within the province of the state to engage in the business of dealing in foodstuffs and providing aid to citizens to build houses.

On page 51, brief of plaintiff in error, is the following statement:

> "Are foodstuffs, clothing and fuel necessaries of life to any greater extent now than they have always been? Since when, and by what particular change or improvement in our economic system has the interest of the public in the production and manufacture of the necessaries of life been enhanced?"

The plaintiff in error answers his own question, as follows: "The answers to these questions are obvious." They are obvious. The growth of population in the United States, the gathering together in great industrial centers of millions of people, the diversification

of industry, the opening of what was, fifty years ago, vast unoccupied territories, the change in industrial conditions caused by steam, electricity and modern machinery have caused the building up of the great packing industry. All these phenomenal developments of the past fifty years have completely changed the customs, practices and manner of living of the American people. The meat industry itself has been completely revolutionized. The little butcher shop in the country village, the larger shop in the larger town have been driven out of business. The farmer no longer kills his own live stock and peddles his product to any considerable extent. The business of killing the live stock and of manufacturing the carcass into food for human consumption has been highly specialized and centralized and is controlled by a few great corporations employing hundreds of thousands of workmen operating in the great commercial centers and shipping their food products all over this country and to foreign countries. Many millions of our people are wholly dependent upon the continuous and efficient operation of the packing industry for their daily ration of meat. Millions of live-stock growers are dependent upon the continuous and efficient operation of the same industry for a market for their live stock. All this has impressed with a public interest the packing industry.

Much space is spent in the printed argument of opposing counsel on the constitutionality of the act so far as it affects the milling industry and the clothing industry. Neither of those questions is here for decision. The only question which this court will determine is the constitutionality of the act as applied to this plaintiff in error. The Industrial Court act is not open to attack in this case upon grounds which might possibly arise, but which do not affect the party questioning its constitutionality (*Arizona Copper Co. v. Hammer*, 250 U. S. 400, 39 S. Ct. 553). With that in mind we shall

limit ourselves to a discussion of the constitutionality of the act in so far as the order of the Industrial Court made in this case affects the Packing Company.

The packing industry is affected with a public interest. It has been made the subject of congressional action, as evidenced by the Packers and Stockyards Act of 1921. In *Stafford v. Wallace*, —— U. S. ——, 42 Sup. Ct. Rep. 397, this court, speaking by Chief Justice Taft, said:

> "The origin of the live stock is in the West; its ultimate destination, known to, and intended by, all engaged in the business, is in the middle West and East, either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce.
>
> "The act, therefore, treats the various stockyards of the country as great national utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East. It assumes that they conduct a business affected by a public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion."

The conditions showing that the packing industry is affected with a public interest are set out in the statement of facts in that case. There this court held that the regulation of stockyards by congress was proper as an incident to the regulation of the packing industry. It is a matter of common knowledge that practically all the meat furnished to the public comes from the packing houses. The day of the small butcher slaughtering his own cattle is over. In the handling of meat any stoppage in supply or distribution quickly affects the public because of the universal use of fresh meat. Therefore the packing industry, as stated in Howat's case, 109 Kan. 376, is affected with a public interest. Kansas is one of the great live-stock-producing states of the Union. It ranks second in the extent of the

packing industry in the United States, being exceeded by only Illinois.

As we have already pointed out, the furnishing of fuel, the milling industry and the furnishing of other food products are affected with a public interest. (*Jones v. City of Portland*, 245 U. S. 217; *Green v. Frazier*, 253 U. S. 233; *Hebe Co. v. Shaw*, 248 U. S. 297.) The Packing Company recognized that its business was affected with the public use when in its answer filed in the Industrial Court it said:

> "Your respondent . . . prays that upon hearing it be determined by this court . . . that any interruption of your respondent's business will result in hardships and loss to the farmers and live-stock producers of the state of Kansas.—The Chas. Wolff Packing Company, by D. R. Hite, Counsel." (R. 11.)

The packing industry being affected with a public interest, it is therefore subject to regulation by the state. (*Munn v. Illinois*, 94 U. S. 113.) It is argued, however, by the Packing Company that its plant is comparatively small and does not stand at the gateway of commerce, as the warehouses did in the Munn case. That, however, is an old contention which has been met by this court and overruled. It was contended that the doctrine of *Munn v. Illinois* did not apply to elevators and warehouses in North Dakota, and especially to the business of Brass, who owned a small grain elevator in a town of less than 100 people. The capacity of the elevator was about 30,000 bushels (very small in comparison with the elevators in the Munn case), and most of the space was used by Brass in warehousing his own grain. This contention was overruled in *Brass v. North Dakota*, 153 U. S. 391, 14 S. Ct. 857, where it was said:

> "These arguments are disposed of, as we think, by the simple observation, already made, that the facts rehearsed are matters for those who make, not for those who interpret, the laws. When it is once admitted, as it is admitted here, that it is com-

> petent for the legislative power to control the business of elevating and storing grain, whether carried on by individuals or associations, in cities of one size and in some circumstances, it follows that such power may be legally exerted over the same business when carried on in smaller cities and in other circumstances. It may be conceded that that would not be wise legislation which provided the same regulations in every case, and overlooked differences in the facts that called for regulations. But, as we have no right to revise the wisdom or expediency of the law in question, so we would not be justified in imputing an improper exercise of discretion to the legislature of North Dakota."

From the above authority it appears the power to regulate an industry is not dependent upon its size. It may affect the policy, but not the power.

The Packing Company says on page 12 of its brief:

> "The packing company's operations have not been interrupted by labor troubles since its incorporation except for five or six weeks during 1918, when there was a partial strike."

The record in this case shows conclusively that there would have been another interruption and a very serious one in 1921 if it had not been for the operation of the Industrial Court law. The employees had taken a strike vote, and would have struck except for the order of the Industrial Court. This court will take judicial notice that a very disastrous strike occurred in December, 1921, in the packing industry, when the packing houses attempted to enforce the reductions which they put in, and which were in line with the reduction made by the plaintiff in error in January, 1921. In that strike very serious disturbances of the peace occurred, loss of life was inflicted, and mob violence prevailed. Except for the order of the Industrial Court made in this case, the Wolff Packing Company would have been so involved. That order alone saved it from the losses and violence which follow such a strike.

The history of the packing industry shows that in 1886 and 1904

there were serious strikes, attended by disturbances of the peace, loss of life and shortage in meat production. There have been for years frequent labor controversies and disturbances in that business. (See App. B.)

It is insisted by the Packing Company that it could have gotten plenty of men at the reduced wages. That is but the opinion of the manager of the packing house. Everyone knows that such statements are generally given out by the managers of the industries affected. At the time of the passage of the Adamson act the managers of the railroad companies throughout the United States made similar statements. Nevertheless congress exercised its own judgment in the matter and passed the Adamson act to prevent the strike, because of the paralysis to the transportation system it would have caused.

The legislature of Kansas and the Industrial Court knew that labor may sometimes be obtained at reduced wages, where there is no strike, yet if a strike is put into effect, idle labor has a great deal of hesitancy in entering. Neither the supreme court of Kansas nor this court is bound to accept the statement of Mr. Wolff, which is contrary to the evidence in the case and to human experience.

On pages 40 and 41 of its brief the Packing Company has set out certain provisions of the order to which it objects.

The objection contained in paragraph 9 is without merit, because the Packing Company agreed at the hearing that women should receive the same wages as men engaged in the same class and kind of work. (R. 117, 118, 195, 106-107.)

Paragraph 15 is complained of because it provides that the temporary order made in the case shall stand, but in this connection the supreme court of Kansas said (R. 149):

"The Court of Industrial Relations, in its opinion on which the order was based, said:

"'Any order made by this court, after having been put into force and effect for a period of sixty days, may be reviewed at the instance of either party and additional evidence introduced to show its practicability, its impracticability, its reasonableness or its unreasonableness. The order made in this case at this time will be made in view of that provision of the law. The business conditions of the day are unusual and unstable, and sixty days or ninety days may bring about such changes as would require a revision of any order made herein.'

"Laws and orders fixing rates for a period of time for public utilities have been sustained to determine their effect upon the revenue of such utility."

Of course the whole order was but a temporary order made to meet an emergency, and did not run as long as did the rates provided in the Adamson law, which were for a period of six to eleven months. This court has frequently held that a test should be made to ascertain whether or not an order made fixing rates is confiscatory. The Packing Company, however, has never put the order into effect. It has not tested it out, and so this court has no basis on which to determine whether or not the temporary order made would cause further losses in the business. As remarked by the Court of Industrial Relations in its opinion and as approved by the supreme court of Kansas in the quotation above set forth, conditions were so unusual that sixty or ninety days might require a change in the order, but it should be given at least a test. This requirement did not render it unconstitutional (*Galveston Electric Company v. Galveston*, —— U. S. ——, 42 S. Ct. 351.)

Complaint is made of paragraph 19, in that it provides for one day's rest out of seven. This provision is constitutional and is within the police power of the state. The universal need of one day of rest out of seven has been recognized by this court. (*Petit v. State of Minn.*, 177 U. S. 164.)

The Packing Company next complains of the provision of paragraph 9, which provides for time and a half for work performed on Sundays and legal holidays. Time and a half for overtime for purpose of regulating hours of labor has been held constitutional in milling and manufacturing establishments in the case of *Bunting v. Oregon*, 243 U. S. 426, 37 S. Ct. 435.

The complaints against paragraphs 2, 4, 11 and 7 relate to the fixing of a schedule of minimum wages. These provisions under similar circumstances were upheld as to the Adamson act in *Wilson v. New*, 243 U. S. 332.

In the Compulsory Insurance Cases the working conditions of strictly private industries were regulated, and the employer was obliged to add, to the wages paid, the insurance premium paid on each employee necessary to provide compensation for the injured employee—and this regardless of the question of negligence. (*Mountain Timber Co. v. Washington*, 243 U. S. 219; *Thornton v. Duffy*, 254 U. S. 361.) In the Workmen Compensation Cases (*Arizona Copper Co. v. Hammer*, supra) the state by law added, to the cost of labor paid by the manufacturer, compensation for injuries occurring without fault of the employer, which had theretofore been borne by the employees. Thus the wages paid were in fact increased by legislative act. What had theretofore been borne by the workmen out of their wages was passed to the employer, to be paid by him in addition to the other wages paid. If the legislature can increase the cost of labor to the manufacturer by making him bear the cost of injuries arising out of accidents, then why cannot the state under similar circumstances raise wages of employees slightly in the face of an emergency? Congress did it by the Adamson act. Kansas ought to be able to do the same thing by the Industrial Court act.

The Packing Company also complains of the fixing of a basic eight-hour day with time and a half for overtime. The fixing of a basic working day in manufacturing establishments and the payment of time and a half for overtime, in order to limit the hours of labor properly, has been sustained in *Bunting v. Oregon*, 243 U. S. 426, supra. The fixing of a basic eight-hour day with payment of overtime has been sustained in *Wilson v. New*, 243 U. S. 332.

The Packing Company insists that the doctrine of *Wilson v. New* has been limited in *R. R. Co. v. Mills*, 253 U. S. 206, 223. That case, however, merely held that where the employer and employees had agreed upon a scale of wages different from that prescribed in the Adamson act, such scale would be unheld. Under the Industrial Court act, if the employer and employees agree upon a scale of wages the Industrial Court would not interfere, and the order complained of in this case specifically provided that if the employer and employees agreed upon a different rate of wages it should control.

The Packing Company also insists that under the doctrine of *Brook-Scanlon Co. v. R. R. Commission*, 251 U. S. 396, that the operation of a public utility cannot be compelled at a loss. That is correct. The order in this cast does not require the appellant to operate. The Packing Company in this case can cease to operate if it does so in good faith and not for the purpose of evading the orders of the Industrial Court. That is recognized in the law itself. It can also reduce the number of employees which it hires, if it does so in good faith and not for the purpose of evading an order entered pursuant to the act. But the case of *Brook-Scanlon Co. v. R. R. Commission*, supra, did not decide that the railroad could continue to operate and disobey the lawful orders of the Railroad Commission. No more can the Packing Company here continue to operate and evade the lawful orders of the Court of Industrial Relations.

It has been repeatedly recognized by this court that the state has an interest in the working conditions and hours of labor in mills and manufacturing establishments and dangerous industries. The packing industry is both a dangerous industry and a manufacturing establishment. It has been held by this court that the government and state may enjoin strikes after they have been called, when dangerous to the public welfare and disturbance of the public peace. It would be strange indeed if the governmental power is limited to locking the barn after the horse is stolen. Must the state wait until the public peace has been disturbed, until violence and bloodshed have occurred, before its power can be exerted? Or is it possible for the state to use its authority in the inception of the controversy? The power of the government to prevent such strikes has been recognized *In re Debs*, 158 U. S. 564, 15 S. Ct. 900; *Wilson v. New*, 243 U. S. 332; and *United States v. Railway Employees' Dept. A. F. L.*, 283 Fed. 479 (shop craft strike, 1922). Shall it be said that nations have the power to join in the prevention of war, but are powerless within their own borders to prevent by law industrial war? That states have the power to prevent strikes which interfere with the public safety, the public welfare and the public peace of the community must be conceded. If this is the case, then it must be admitted that a state has the power to do that which is necessary to make effective its exercise of authority in this respect. (*C. B. & Q. Ry. Co. v. McGuire*, 219 U. S. 549, 31 S. Ct. 259.)

It would be futile to give the Industrial Court authority to settle industrial disputes and not give it the power to prescribe a temporary minimum wage. It would likewise be futile to give to the Industrial Court the power to prescribe hours of labor and a minimum wage scale, if the company could make the award ineffective by reducing the number of hours of employment to a nominal amount each month. In other words, where wages are fixed by the hour, it is

necessary also to prescribe the minimum number of hours per week or month in order to make the fixation complete. To say that you must pay forty cents an hour, and permit the employer to employ a man but one hour, would be to invite controversy and strife. The fixing of a minimum wage on the basis of an hourly scale should include a requirement of minimum hours per week or month. This court has recognized the right of the state in the manufacturing establishments and other industries to regulate time and method of the payment of wages. This court has stated that congress has the power to enforce compulsory arbitration.

In *Wilson v. New*, 243 U. S. 332, 37 S. Ct. 298, l. c. 303, the majority opinion recognized that the Adamson act amounted to compulsory arbitration, which congress had the authority to enact. Chief Justice White used the following language:

> "We are of opinion that the reasons stated conclusively establish that, from the point of view of inherent power, the act which is before us was clearly within the legislative power of congress to adopt, and that, in substance and effect, it amounted to an exertion of its authority, under the circumstances disclosed, to compulsorily arbitrate the dispute between the parties by establishing as to the subject matter of that dispute a legislative standard of wages operative and binding as a matter of law upon the parties—a power none the less efficaciously exerted because exercised by direct legislative act instead of by the enactment of other and appropriate means providing for the bringing about of such result. If it be conceded that the power to enact the statute was in effect the exercise of the right to fix wages, where, by reason of the dispute, there had been a failure to fix by agreement, it would simply serve to show the nature and character of the regulation essential to protect the public right and safeguard the movement of interstate commerce, not involving any denial of the authority to adopt it."

Mr. Justice McReynolds, in dissenting, said:

> "But considering the doctrine now affirmed by a majority of the court as established, it follows as of course that congress has power to fix a maximum as well as a minimum wage for

> trainmen; to require compulsory arbitration of labor disputes which may seriously and directly jeopardize the movement of interstate traffic; and to take measures effectively to protect the free flow of such commerce against any combination, whether of operatives, owners or strangers."

It thus appears that compulsory arbitration has been upheld by this court and the fixing of wages by the legislature has been sustained.

If congress had the power to do it in reference to interstate commerce, then the state has the power to do it with reference to manufacturing establishments within its borders. The state of Kansas has seen fit to confer this power upon a tribunal. This was recognized as a proper procedure in *Wilson v. New*, supra. There is no question of fair hearing in this case. The Packing Company has been afforded every opportunity to present its evidence and to be heard. There is in this case every element that was present in *Wilson v. New*. The packing industry in January, 1921, was restive throughout the country. The termination of the Alschuler agreement, which had been in effect since 1917, was being attempted by the packing industry. The plant at Topeka was only one of several plants owned and controlled by the Allied Packers, which was working in close harmony with the Big Five on this question of labor. A strike in the plaintiff in error's plant might spread rapidly to all the other plants in Kansas and in the nation.

It is well known that some of the greatest strikes of history have started from a small beginning. Such is the story of the great Pullman strike. It began in a comparatively small department of the company and spread throughout the land. We insist that the state should have the right, by an adjustment of the controversy, to stop the strike at its inception, and prevent it from spreading.

As the testimony shows, the Wolff Packing Company's situation was closely linked with the industrial unrest throughout the packing

industry in the United States. In *Wilson v. New* it was recognized that the government had the authority to prevent the strike upon a small road (M. O. & G.), whose receivers were the appellees in that suit. There congress had the power to prevent a strike by prescribing a basic eight-hour day, payment of overtime and a minimum wage. It was, as the court said, compulsory arbitration. Here, in a like emergency, the state of Kansas has the power to prescribe a basic eight-hour day, payment for overtime and minimum wages. The scale of wages provided in the Adamson act was temporary in its nature. The scale here provided was temporary in its nature as recognized in the order and opinion of the Industrial Court. There was an emergency there; there has been an emergency here. In that case congress determined the emergency. Here a tribunal created by the legislature has determined the emergency, and the existence of that emergency has been sustained by the supreme court of Kansas upon an examination of all the facts.

Much is said of the dissenting opinion in this case in the supreme court of Kansas. That dissenting opinion, however, went to but one point, to wit—the existence of an emergency in the matter of food supply. It overlooked entirely the question of emergency as to the disturbance of the public peace and the detriment to the public welfare. The public peace of a single community in a state should be guarded with as much zeal by the legislature and its agents as the peace of the entire state. The peace and safety of the citizens of that single community are entitled to protection as well as the peace and safety of the citizens of the entire state. This court has recognized that if a large warehouse in the gateway of commerce can be regulated, so may the smallest warehouse in the state of North Dakota. (*Brass v. N. Dak.*, 153 U. S. 391.) If the entire packing industry can be regulated in an emergency, so that the whole of a

nation or of a state shall not be affected injuriously, so may a comparatively small packing house, an indivisible part of that large industry, be regulated so that the peace and safety and welfare of a community may not be injuriously affected.

The supreme court of Kansas has determined that an emergency existed in the present case. That determination must stand unless palpably wrong. The supreme court of Kansas is familiar with the local conditions, and its determination is entitled to the greatest consideration. We submit that its determination of the existence of an emergency and of the public interest is right and should be affirmed.

The Emergency.

The evidence before the Industrial Court was taken from March 3 to March 11, 1921. Having considered the evidence which clearly established all the facts set out in the foregoing statement, the Industrial Court took jurisdiction of the case. The Industrial Court held that there was a public interest and a public emergency. A temporary order was made on March 21 (R. 11) practically identical with the compromise agreement made by Davis, Hoover and Wallace in the general strike, then impending (R. 2). The complaint of the employees (R. 7) prayed that the court take jurisdiction of the controversy, and that it enter upon a full investigation of the dispute existing between the Packing Company and its employees; that the court enter an order fixing a fair, reasonable and living wage for the employees. The answer of the Packing Company (R. 11) prays that upon hearing it be determined by the Industrial Court that its dealings with its employees had been just, fair and reasonable; that no grounds exist for a strike or to interrupt the conduct of its business which would manifestly impair its ability to furnish an open free market for live stock; *it also asked the Industrial Court to determine that the interruption of its business would result in hardship and loss to the farmers and live-stock pro-*

ducers of Kansas. Thus the issue was joined and the hearing proceeded as above stated, resulting in the temporary order on March 21, which continued until the permanent order was made on May 2. The conditions under which the employees were compelled to work is set out by the court (R. 16, 17). Has the order any relation to the purposes of the act, to wit: (*a*) to keep the plant running continuously so as not to lessen the food supply; (*b*) to maintain the market for farmers and live-stock producers of Kansas; (*c*) to prevent strikes and thus promote the peace and safety of the state?

The Industrial Court act provides the machinery for the determination of industrial disputes when the employer and employees cannot agree. They could not agree in this case. The procedure is simple and direct and can best be illustrated by what was done in this case. The Wolff Packing Company in Topeka, Kan., had a contract with its employees made May 10, 1920, which expired by its terms January 1, 1921. When it became known to the employees that the contract would not be renewed, the employees voted to strike. Instead of doing so they finally submitted their dispute to the Industrial Court by filing a complaint on January 19, 1921 (R. 4). In this they set out their grievances. The Packing Company answered, and also asked for an investigation. Thus the issue was joined. Nothing in the act requires an employee to continue to work if he wants to quit, and nothing requires an employer to continue if he decides to go out of business. The question is not whether the Packing Company shall pay such wages in the future as may be prescribed by the Industrial Court, but whether that part of the order of the Industrial Court which is put into force by the supreme court is so clearly unreasonable and arbitrary under all the circumstances that it violates the fourteenth amendment.

The Wolff Packing Company contract with its employees was substantially the same as the Alschuler agreement, but the wages

were lower (R. 100). The vote on the general strike was 225 to 1 (R. 101). Presiding Judge Huggins (R. 48) gives the reasons for the order and explains how slight the burden was that it placed on the Packing Company. The order was certainly far from arbitrary and unreasonable, in view of his statement in the opinion (R. 19). He said that the industrial law was intended to be as fair to capital as to labor; that it was to promote the general welfare; that labor employed in the essential industries should receive a fair wage, and that capital invested therein should receive a fair return. He called attention to the fact that the order was made in view of that provision of the law by which it could be put in force for a period of sixty days, and might then be reviewed at the instance of either party, and additional evidence introduced to show its practicability or impracticability, its reasonableness or its unreasonableness. He noted that business conditions are unusual and unstable and that sixty days or ninety days may bring about such changes as may require revision of any order made in the case.

If it was helpful for this court in *Stafford v. Wallace* (42 S. Ct. 395; —— U. S. ——) to ascertain the conditions under which congress passed the packers and stockyards act, why should it not do the same with the Kansas Industrial Court order? The Howat case (brief of plaintiff in error, p. 19) described the conditions under which the act was passed. That case had to do with fuel. The conditions surrounding the order of May 2, 1921, had to do with food and the public peace. If congress can regulate the transportation of live stock from the farm and ranches of the West, including the charges of the employees of railroads (*Wilson v. New*), and the charges and practices pertaining to the handling of stock in the yards (*Stafford v. Wallace*), and the distribution of the meat products after they are manufactured (*Swift v. U. S.*, 196 U. S. 375; 25 S. Ct. 276), all of which related to interstate commerce, then

certainly Kansas, through its Industrial Court, can regulate the production and manufacture of meat products, including the hours of labor, wages of employees and working conditions as it has attempted to do under the Industrial Court order of May 2, 1921.

Judge McDermott, a member of the Court of Industrial Relations (R. 49), says that on March 21, 1921, when the temporary order was made there was threatened a strike. This created an emergency which warranted the Industrial Court in taking the course it did. Kansas has attempted, in the Industrial Court act (brief of plaintiff in error, 70), to create a tribunal to determine disputes between employers and employees. The order in question did for the employees of the Packing Company only what Judge Alschuler had done in his awards for the employees of the Big Five Packers. This is shown by the following comparison of the orders of the Kansas court and the findings and awards of Judge Alschuler:

Comparison of Orders of Kansas Court of Industrial Relations with Findings and Awards of Samuel Alschuler, United States Administrator.

Orders of Kansas Court of Industrial Relations.	Awards of Judge Alschuler.
(Only such paragraphs of this order as were upheld by the Kansas supreme court are quoted.)	In none of Judge Alschuler's awards is any distinction made between organized and unorganized employees. Each of these awards simply uses the word "employees." (See awards March, 1918; February 15, 1919; December 1, 1919; April 26, 1920; December 7, 1920.)
"Employees, whether organized or unorganized, shall receive the wages as shown in schedules hereinafter set out." (Par. 2, Order, R. 21.)	
"A basic working day of eight hours shall be observed in this industry; but a nine-hour day may be observed not to exceed two days in any one week without penalty: *Providing, however*, That if the working hours of the week shall exceed forty-eight in number, all over forty-eight shall be paid for at the rate of time and one-half; furthermore, in case a day in excess of the eight-hour day shall be observed more than two days in one	Judge Alschuler's first award (March, 1918) reads: "Beginning May 5, 1918, and continuing thereafter, eight hours shall constitute a basic workday, and such workday shall be completed, insofar as is possible, within a period of not more than nine consecutive hours. "Those operations which are continuous during the twenty-four hours shall on and after said date be con-

week, all over eight hours, except for said two days in said week, shall be paid for at the rate of time and one-half, even though the working hours of the week may be forty-eight hours or fewer."

(Par. 3, Order, R. 21.)

ducted by three shifts of eight hours each.

"Overtime work shall be paid for at the following rates: Double time for all time worked on Sundays and holidays, including New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, or the days legally celebrated in lieu thereof. Where the operation is necessarily and generally carried on for seven days of the week, provision may be made by relief gangs or otherwise, so that employees in such operations may be relieved from duty on some day of the week, and in case of such relief on any other day of the week, double time shall not be allowed for work on Sunday of such week.

"On and after the induction of the basic eight-hour day as above provided, the weekly overtime pay (not including any day for which double time is paid) shall be at the rate of time and one-fourth for the first two hours in excess of the regular eight-hour day on each such day, and at the rate of time and one-half for all time in excess of ten hours on any such day and Sundays double time."

This was changed by the award of February 15, 1919, as follows:

"Beginning March 2, 1919, the overtime rate shall be time and one-half applicable to all daily overtime after eight hours."

This remained unchanged until the award of July 14, 1921 (after the issuance of the order of the Court of Industrial Relations), by which award it was modified as follows:

"Employers may at their option upon three days of each week work their employees nine hours before being required to pay overtime rates for such days, or, if they prefer, they may work them one day of each week ten hours, and one other day of that week nine hours, before being required to pay overtime rates for such days, the overtime rate as to other days of the week to remain as heretofore. If, during any such week, more than forty-eight hours be worked, overtime rate shall apply to the week's time in excess of forty-eight hours. Holiday rates are not affected."

"No guarantee of time per week is specifically ordered; but sufficient work shall be offered to the regular employees in each and every month so that the monthly earnings of regular workers will be sufficient to constitute a fair wage under the Kansas industrial law, as heretofore defined by this court."
(Par. 4, Order, R. 21.)

Judge Alschuler's first award (March, 1918) provided:

"There shall be no change made in the guaranteed time in effect November 30, 1917, except that the weekly guaranteed time in the plant of Swift & Company shall be forty hours, the same as in all other plants, and except also in those weeks wherein any of the above-named holidays occur the guaranteed time of such employees as do not work on such holiday shall for such week be thirty-three and one-half hours."

This referred to the forty-hour guarantee in effect since November 30, 1917. The only modification of this guarantee was in the award of July 14, 1921, as follows:

"In computing 'guaranteed time' any overtime or holiday work during the week shall be figured at the number of hours represented by the pay rate therefor, *i. e.*, time and one-half for an overtime hour shall be considered as one and one-half hours of work applicable on the forty-hour guaranty. This and the prior section of the award shall be effective July 17, 1921."

"Women workers shall receive the same wages as men engaged in the same class and kind of work."
(Par. 9, Order, R. 22.)

Judge Alschuler's first award (March, 1918) provided:

"Wage rates shall be the same for male and female employees doing the same class of work."

This provision was not changed or modified by any subsequent awards.

"Piece-work rates shall be paid in accordance with piece-work schedule herein set out."
(Par. 11, Order, R. 22.)

The piece-work schedule fixed by the Court of Industrial Relations was the same as that in the contract of May 10, 1920, which was 10 to 15 [redacted] lower than that fixed by Judge Alschuler. (Testimony, Mr. Jimmerson, R. 189.) In each of Judge Alschuler's awards the piece-work schedule was increased proportionately to the hourly wage schedule.

(Awards, March, 1918; February 15 1919; December 1, 1919; April 26 1920; December 7, 1920.)

"Workers paid by the week or day, if employed within the plant and not within the office or sales department, shall be subject to hours of work and overtime as others employed under the terms of Finding No. 3 hereof."
(Par. 14, Order, R. 22.)

None of Judge Alschuler's awards refer to the office or sales departments.

"The temporary order heretofore made in this case shall stand and be complied with by the respondent company, beginning on the date of said temporary order and continuing until May 1, 1921, the date of this order."
(Par. 15, Order, R. 22.)

The substance of Judge Alschuler's awards as to hours of labor and overtime is quoted above.

The temporary order referred to, so far as material for the purpose of comparison, was as follows:

"That pending the final determination of this controversy, the employees of respondent, who handle the product from the time the animals are driven into the shackling pens until the time that the product is placed in storage ready to be shipped out upon orders from customers, be placed upon the eight-hour day, but that time and one-fourth shall be paid for the ninth hour, and time and one-half thereafter." (R. 12.)

"The following schedule of minimum wages shall be paid by the respondent company to its respective employees, to wit: (listing the wages)."
(Par. 17, Order, R. 22.)

Judge Alschuler increased wages as follows:

3½-4½ cents per hour.—Award March, 1918.

10 per cent additional.—Award February 15, 1919.

7½ per cent additional.—Award December 1, 1919.

3 cents per hour additional.—Award April 26, 1920.

5 cents per hour additional.—Award December 7, 1920.

In his award of July 14, 1921, Judge Alschuler denied the application to reduce wages.

The schedule fixed by the Court of Industrial Relations was substantially lower than the schedule in the contract proposed by the employees (R. 250-258), which was 10 to 15 per cents per hour lower than the wages fixed by Judge Alschuler and in effect at that time. (Testimony of Mr. Jimmerson, R. 189.)

"The establishing of the above minimum wage schedule shall not in any way be construed as restricting or preventing the respondent from paying a higher wage when the same is deemed advisable."
(Par. 18, Order, R. 22.)

There is no similar phrase in any of Judge Alschuler's awards, neither is there any such restriction.

Summary of Comparison of Orders of Kansas Court of Industrial Relations with Findings and Awards of Samuel Alschuler, United States Administrator.

Orders of Kansas Court of Industrial Relations.	Awards of Judge Alschuler.
Organization: No distinction between organized and unorganized employees.	No distinction between organized and unorganized employees.
Basic day: Basic day eight hours.	Basic day eight hours.
Punitive overtime: *In temporary order*, punitive overtime after eight hours. *In final order*, punitive overtime after eight hours, except two days per week punitive overtime after nine hours.	Punitive overtime after eight hours until July 14, 1921, when modified to except three days when punitive overtime not to commence until after nine hours, or two days' punitive overtime to commence one day after ten hours and one day after nine hours.
Rate of pay for punitive overtime: *In temporary order*, punitive overtime at rate of time and one-fourth ninth hour and time and one-half after ninth hour. *In final order*, all punitive overtime at rate of time and one-half.	*In first award*, punitive overtime at rate of time and one-fourth first two hours, time and one-half thereafter. *Award February 15, 1919*, and thereafter, all punitive overtime at rate of time and one-half. Sundays and holidays, double time.
Basic week: Forty-eight hours.	Forty-eight hours.
Guarantee: Not specifically fixed. (Enough to secure fair monthly wage for regular workers.)	Forty hours per week.
Women workers: Receive same pay as men for same work.	Receive same pay as men for same work.

Piece-work rates:	
Materially lower than fixed by Judge Alschuler.	Materially higher than fixed by Court of Industrial Relations.
Office and sales departments:	
Not included in order.	Not included in awards.
Wage rates:	
Materially lower than fixed by Judge Alschuler.	Materially higher than fixed by Court of Industrial Relations.

(See Appendix D for authorities.)

This comparison shows that the order of the Industrial Court was not arbitrary or unreasonable. It did less for the employees of the Packing Company than Judge Alschuler for the employees of the Big Five. The Packing Company prayed in its answer to the complaint of its employees in this case, that it be determined that any interruption of its business would result in hardships and loss to the farmers and live-stock producers of the state of Kansas. Its demand has been complied with, both by the Industrial Court and the supreme court of Kansas. It should be satisfied with these determinations that its business is affected with a public interest, but apparently it will not be so until this court also speaks.

As we have already pointed out, a strike was threatened, the food supply was about to be interfered with. As recognized by the Packing Company in the prayer of its answer, interference with its operations would result in hardship and loss to the farmers and live-stock producers of the state. An emergency existed. Certainly, under the decisions of this court, the order made was constitutional and valid. In the emergency rent cases it was recognized that the legislative branch of government had the power to regulate a business in order to tide over a public emergency:

> "No doubt it is true that a legislative declaration of facts that are material only as the ground for enacting a rule of law, for instance, that a certain use is a public one, may not be held conclusive by the courts. (*Shoemaker v. United States*, 147

U. S. 282, 298, 37 L. Ed. 170, 184, 13 Sup. Ct. Rep. 361; *Hairston v. Danville & W. R. Co.*, 208 U. S. 598, 606, 52 L. Ed. 637, 640, 28 Sup. Ct. Rep. 331, 13 Ann. Cas. 1008; *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210, 227, 53 L. Ed. 150, 159, 29 Sup. Ct. Rep. 67; *Producers Transp. Co. v. Railroad Commission*, 251 U. S. 228, 230, 64 L. Ed. 239, 241, P. U. R. 1920C 574, 40 Sup. Ct. Rep. 131.) But a declaration by a legislature concerning public conditions, that by necessity and duty it must know, is entitled at least to great respect. In this instance congress stated a publicly notorious and almost world-wide fact. That the emergency declared by the statute did exist must be assumed, and the question is whether congress was incompetent to meet it in the way in which it has been met by most of the civilized countries of the world."

. . . . . .

"The regulation is put and justified only as a temporary measure. See *Wilson v. New*, 243 U. S. 332, 345, 346, 61 L. Ed. 753, 772, 773, L. R. A. 1917E 938, 37 Sup. Ct. Rep. 298, Ann. Cas. 1918A, 1024; *Ft. Smith & W. R. Co. v. Mills*, 253 U. S. 206, 64 L. Ed. 862, 40 Sup. Ct. Rep. 526. A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change." (*Block v. Hirsh*, 256 U. S. 135, 65 L. Ed. 865, 41 Sup. Ct. Rep. 458.)

"In this, as in the previous case of *Block v. Hirsh* (256 U. S. 135, ante, 865, 16 A. L. R. 165, 41 Sup. Ct. Rep. 458), we shall assume, in accordance with the statutes, the finding of the court below, and of the court of appeals of the state, in *People, ex rel. Durham Realty Corp., v. La Fetra*, March 8, 1921, 230 N. Y. 429, 16 A. L. R. 152, 130 N. E. 601, and *Guttag v. Shatzkin*, March 8, 1921, 230 N. Y. (mem.) 647, 130 N. E. 929, that the emergency declared exists. (*Hebe Co. v. Shaw*, 248 U. S. 297, 303, 63 L. Ed. 255, 258, 39 Sup. Ct. Rep. 125; *Hairston v. Danville & W. R. Co.*, 208 U. S. 598, 607, 52 L. Ed. 637, 641, 28 Sup. Ct. Rep. 331, 13 Ann. Cas. 1008.)

"The chief objections to these acts have been dealt with in *Block v. Hirsh*, supra. In the present case more emphasis is laid upon the impairment of the obligation of the contract of the lessees to surrender possession, and of the new lease, which was to have gone into effect upon October 1, last year. But contracts are made subject to this exercise of the power of

the state when otherwise justified, as we have held this to be, *Manigault v. Springs*, 199 U. S. 473, 480, 50 L. Ed. 274, 278, 26 Sup. Ct. Rep. 127; *Louisville & N. R. Co. v. Mottley*, 219 U. S. 467, 482, 55 L. Ed. 297, 303, 34 L. R. A., n. s., 671, 31 Sup. Ct. Rep. 265; *Chicago & A. R. Co. v. Tranbarger*, 238 U. S. 67, 76, 77, 59 L. Ed. 1204, 1210, 1211, 35 Sup. Ct. Rep. 678; *Union Dry Goods Co. v. Georgia Pub. Service Corp.*, 248 U. S. 372, 375, 63 L. Ed. 309, 311, 9 A. L. R. 1420, P. U. R. 1919C 60, 39 Sup. Ct. Rep. 117; *Producers' Transp. Co. v. Railroad Commission*, 251 U. S. 228, 232, 64 L. Ed. 239, 242, P. U. R. 1920C 574, 40 Sup. Ct. Rep. 131.) It is said, too, that the laws are discriminating in respect of the cities affected and the character of the buildings, the laws not extending to buildings occupied for business purposes, hotel property, or buildings now in course of erection, etc. But, as the evil to be met was a very pressing want of shelter in certain crowded centers, the classification was too obviously justified to need explanation, beyond repeating what was said below as to new buildings, that the unknown cost of completing them and the need to encourage such structures sufficiently explain the last item on the excepted list."

"It is objected finally that chapter 951, above stated, in so far as it required active services to be rendered to the tenants, is void on the rather singular ground that it infringes the thirteenth amendment. It is true that the traditions of our law are opposed to compelling a man to perform strictly personal services against his will, even when he has contracted to render them. But the services in question, although involving some activities, are so far from personal that they constitute the universal and necessary incidents of modern apartment houses. They are analogous to the services that, in the old law, might issue out of or be attached to land. We perceive no additional difficulties in this statute, if applicable as assumed. The whole case was well discussed below, and we are of opinion that the decree should be affirmed." (*Brown Holding Co. v. Feldman*, 256 U. S. 170, 65 L. Ed. 877.)

The above decisions were followed in *Levy Leasing Company v. Siegel* (March 20, 1922), Adv. Op. No. 11, p. 326.

The evidence shows an emergency. The legislative board (the Industrial Court) found an emergency. The commissioner found

an emergency. The supreme court of Kansas, after a comprehensive review of the entire evidence, likewise found an emergency. Such a finding, by all who have considered the situation and who are familiar with local conditions, should not be disturbed by this court under the doctrine of the cases cited above.

Confiscation.

There Was No Evidence of Economical Management.

The Packing Company claims, if it put into effect the wage scale and over time rule of the Industrial Court, it would be compelled to do business at a loss. To sustain this showing it was necessary for it to establish that its expenditures of all kinds were as low as it was practicable to make them and that the business was competently conducted, so as to obtain all of the receipts available and to avoid any unnecessary expenses. No evidence was introduced by the Packing Company on those points, and its assertion that it would have been compelled to do business at a loss is based upon its accounting figures, with nothing back of them. At the hearing before the Court of Industrial Relations presiding Judge Huggins called attention to the importance of this matter. He said: "It seems to me, if, as a matter of fact, a legitimate, proper and unavoidable loss under good management has occurred by reason of the local business, the business actually transacted by this plant, that would affect the question of a fair wage to that extent." (R. 202.) And again: "But I will say further that I am making this ruling with the idea in my mind that the largest matter of concern here is the operation of this local plant, this plant here in which these people are working, and that the main concern is to find out whether, under an economic and efficient management, this plant can afford or cannot afford to pay a fair wage and to grant healthful surroundings and proper working conditions to its employees,

and that in determining that question the management and operation and results of the operation of the local plants are at least of paramount importance. Whatever influence the loss sustained by the Allied Packers at their other plants may have will be a matter of secondary consideration at least." (R. 203, 204.)

These statements grew out of the consideration of the matter of a loss admitted by the Packing Company to have been sustained by the Allied Packers at its plant at Macon, Ga., and that the revenue of the plant of the Packing Company at Topeka was called upon to contribute a ratable proportion of that loss. (R. 203.)

The remarks of Judge Huggins, however, were broad, and applied not only to the matter of losses suffered elsewhere, but to the question of the economical and efficient management of this plant in question.

Although this subject was thus called to the attention of the Packing Company, no evidence was introduced by it upon that line, and there is no showing whatever in the record of economical and efficient management of its plant and business bearing upon the question whether it would sustain a loss under an increased wage schedule or the fixing of a basic day of eight or nine hours, or the allowance of any extra pay for overtime.

It has been repeatedly held by this court, in cases where rates were put into effect by administrative tribunals for public utilities, that to sustain the contention that such rates would cause a deficit, it is essential to show economical and efficient operation of the plant. If the loss is due to other causes than the imposition of the high rates, the objection on that ground must fail. The same rule should apply here.

In *Chicago and G. T. R. Co. v. Wellman*, 143 U. S. 339, 36 L. Ed. 176, this court said:

"It is agreed that the defendant's operating expenses for 1888 were $2,404,516.54. Of what do these operating expenses consist? Are they made up partially of extravagant salaries; fifty to one hundred thousand dollars to the president, and in like proportions to subordinate officers? Surely, before the courts are called upon to adjudge an act of the legislature fixing the maximum passenger rates for railroad companies to be unconstitutional, on the ground that its enforcement would prevent the stockholders from receiving any dividends on their investments, or the bondholders any interest on their loans, they should be fully advised as to what is done with the receipts and earnings of the company; for if so advised, it might clearly appear that a prudent and honest management would, within the rates prescribed, secure to the bondholders their interest, and to the stockholders reasonable dividends. While the protection of vested rights of property is a supreme duty of the courts, it has not come to this, that the legislative power rests subservient to the discretion of any railroad corporation which may, by exorbitant and unreasonable salaries, or in some other improper way, transfer its earning into what it is pleased to call 'operating expenses.'

"We do not mean to insinuate aught against the actual management of the affairs of this company. The silence of the record gives us no information, and we have no knowledge outside thereof, and no suspicion of wrong. Our suggestion is only to indicate how easily courts may be misled into doing grievous wrong to the public, and how careful they should be to not declare legislative acts unconstitutional upon agreed and general statements, and without the fullest disclosure of all material facts."

To the same effect see:

Simpson v. Shepard (Minnesota Rate Case), 230 U. S. 351, 57 L. Ed. 1511.

City of Knoxville v. Knoxville Water Co., 212 U. S. 1, 53 L. Ed. 371.

Railroad Commission v. Cumberland Telephone & Telegraph Co., 212 U. S. 414, 53 L. Ed. 577.

Reagan v. Farmers Loan and Trust Co., 154 U. S. 362, 38 L. Ed. 1014.

If the Packing Company would suffer a loss during the period while the order of the Industrial Court was being obeyed, and if that loss was caused, for instance, by excessive salesmen's salaries or traveling expenses, salaries of office force or executive officers, cost of supplies, packages, fuel or power, excessive allowances or rebates to purchasers, brokerage payment, allowances for the return of goods, misjudgment in laying in stocks or in holding stocks until lower prices came into effect, when they might have been sold at higher prices, or lack of energy or skill in finding a market, these should not be charged against plant labor, and the workmen should not be required to accept lower wages or work longer hours on that account.

The burden was upon the Packing Company to establish that the order of the Industrial Court was confiscatory. The bare presentation of evidence showing deficits in operation is not proof of confiscation. It is essential to show economical and efficient operation.

The Packing Company not only failed to make such proof, but its evidence tended to show that its claim of deficits was unfounded.

The accounting figures submitted by it at the hearing were prepared by Ernst & Ernst, accountants. In their report of February 25, 1921, to the board of directors and stockholders of the Packing Company they state:

> "At the date of our examination we found the accounts-receivable records in a deplorable condition, and we were advised that the general ledger control had been partly built up from postings to customer's ledger, instead of being compiled from the original records. We found that numerous entries had been made to the control account, presumably to adjust same to the aggregate amount of the individual accounts at various dates;

one of these entries amounting to $33,207.93 being credited to "sales adjustment" account under date of October 18, 1920, with the explanation 'to bring the accounts receivable control to meet the figures shown to be a correct balance.' We noted further that the control account was credited with the amounts of $7,500 and $6,500 at different dates, to cover estimated returns and allowances, and all of these amounts, together with sundry other discrepancies located by us, have been applied as adjustments of sales and allowances as shown by the books.

"In addition to the amounts above specifically commented upon, numerous other adjustments were made in the control account during the six months' period ended October 30, 1920, and we are submitting herewith reconcilement of the book balances with the aggregate customer's accounts receivable stated on balance sheet." (R. 224.)

"We have hereinbefore commented upon the condition of the records with particular reference to customer's accounts, and attention is directed to the fact in general we found the accounting records of the company in a very unsatisfactory condition. We noted, however, that at the time of our examination the accounting department was under the direct supervision of a representative of the Chicago office of the Allied Packers, Incorporated, and were advised that the prevailing conditions would be promptly remedied." (R. 226.)

H. E. Smith, who supervised the examination of the books of the Packing Company by Ernst & Ernst, for the purpose of making these statements of accounts, said that the substance of the above comments was made because the accountants could not safeguard accuracy and satisfy themselves, and to tell the board of directors and stockholders the conditions the accountants found the records in, that it was part of their audit. (R. 90, 91.)

In the latter part of 1920 and first part of 1921 allowances to customers were excessive. (R. 74.)

In the statement introduced on behalf of the Packing Company of income and expense, January 17 to April 30, 1921, appeared as expenses the items of bond interest, $5,805.90; central-office adminis-

tration, $12,562.81; central-office pay roll, $5,452.77; depreciation, $23,910.00. (R. 241.) The commissioner rejected the first three of these items and reduced the item for depreciation to one-third of the amount of that claimed by the Packing Company. (Finding No. 8, R. 122, 123.)

The bonded interest was the proportion paid by the Packing Company upon bonds issued by the Allied Packers, Incorporated, which owned most of the stock of the Packing Company. The central-office administration and central-office pay roll were expenses incurred in the conduct of the offices at Chicago of the Allied Packers, Incorporated.

The interest on bonds issued by a controlling stockholder is not a proper charge against the business, neither are administration or pay-roll expenses of the controlling stockholder proper charges against the business, unless it is shown that they actually aided to the amount of these items in the conduct of the business of the Packing Company. An attempt was made to show this in the testimony of Charles Wolff, jr. (R. 64), but it was of a vague character and could not carry conviction.

The item of depreciation was based upon a valuation of the plant and equipment of the Packing Company as of December 1, 1919.

The evidence submitted by the Packing Company showed there was an appreciation of the net value of permanent assets, based on that appraisal, of $922,120.81. The total value of the plant as of October 30, 1920, was given as $1,298,310.06. (Balance sheet at the close of business October 30, 1920, which follows R. 226.) In that balance sheet it showed: "Less: Allowance to reduce reproductive values to sound values at date of appraisal, plus current depreciation, $400,799.85."

The reports made by the Packing Company to the secretary of state of Kansas, giving a detailed statement of assets and liabilities

as of December 31, 1920, show a still greater appreciation in the value of the real estate and personal property during 1920. The item of personal property does not include merchandise. By this report on December 31, 1919, the valuation of real estate was $362,303.33 and of personal property $160,976.62 (total, $523,279.95); the value of real estate December 31, 1920, was given as $1,063,116.13 and of personal property $659,943.67 (total, $1,723,059.80). The difference between these two totals, as we figure it, is $1,199,799.85. (R. 260, 261). This shows an appreciation of that much in valuation of these two items in one year's time. There appeared to have been additions to the plant in the period from December 1, 1919, to October 30, 1920, in the value of $25,121.25 (R. 235.) There was no evidence of any addition to the plant in November and December, 1920.

We refer to the items in exhibit X6 and exhibit X7 as amended, for the purpose of showing the method of the Packing Company in marking up the valuation of its plant. This was soon after the Allied Packers, Incorporated, obtained control, in October, 1919. At the hearings it did not rely upon the valuations as shown in the exhibit X7 as amended, but on those shown in the balance sheet at the close of business October 30, 1920, above referred to. (R., next after 266.)

On December 1, 1919, prices of all kinds of property were abnormally high. Such a peak valuation could not justly be taken into account in determining the financial condition of the business of the Packing Company. The commissioner said on this point:

> "Also, under instructions from the central office a reserve for depreciation of the plant, machinery and equipment is set up periodically on the books of the Wolff Company, and charged to cost of operation. The percentages on which this reserve is computed are not questioned, but they are based, not upon actual cost of the plant and equipment, but upon an appraisal

made in December, 1919, at about the peak of high prices, as the replacement cost, which was approximately three times the actual cost or prewar value. This reserve does not represent actual replacements made, but only a fund held for the purpose when needed, and while it may be conservative business policy to estimate the same at the going cost, yet it is excessive in figuring profit and loss on current operation of the plant, and these reserves for depreciation should be divided by three in computing the operating expense for profit and loss." (Finding No. 8, R. 123.)

Accordingly in figuring the result of the operation of the plant for the six months' period ending April 30, 1921, and the periods November 1, 1920, to January 17, 1921, and January 17, 1921, to April 30, 1921, and for the five weeks period from March 26, 1921, to April 30, 1921, the commissioner reduced the item of reserve for depreciation to about one-third of that claimed by the Packing Company. (Finding 9, R. 124.)

The depreciation reserve which had been claimed by the Packing Company for the period November 1, 1920, to January 15, 1921, was $17,534.00 (R. 240); and for the period January 17, 1921, to April 30, 1921, was $23,910.00 (R. 241); and for the period November 1, 1920, to April 30, 1921, was $41,444.00 (R. 293). That claimed for the entire year ending October 30, 1920, was $59,206.06 (R. 230). If the rate of depreciation for the year had been applied to the six months it would have been $29,206.06 instead of $41,444.

Charles Wolff, president of the Packing Company, testified at the hearing before the Industrial Court that in October, 1919, the Allied Packers, Incorporated, bought about ninety per cent of the stock of the Packing Company; the capital stock then was $600,000 (R. 200, 201); that the value of the plant was about the amount of the capital stock. The Allied Packers, Incorporated, paid $130 a share of par $100 for this stock (R. 66). This was upon a basis of the total value of the capital stock of $740,000. Mr. Wolff stated

at the subsequent hearing before the commissioner that the value of the plant as ascertained by the American Appraisal Company was about $1,000,000 (R. 209, 210, 65.) The valuation by that company was that on which the Packing Company relied in this case (balance sheet following R. 226). By that balance sheet a valuation was claimed of $1,298,310.06. These matters throw doubt upon the assertions of the Packing Company that it had a deficit in 1919 and 1920, and would have incurred a loss if the wages, hours and overtime order of the Court of Industrial Relations had been put into effect.

The Packing Company Should Have Made a Trial Under the Order for Sixty Days.

It is provided in section 8, chapter 29, Laws of Kansas, 1920, the statute in question:

> "Such terms, conditions, rules, practices, wages or standard of wages, so fixed and determined by said court and stated in said order, shall continue for such reasonable time as may be fixed by said court, or until changed by agreement of the parties with the approval of the court. If either party to such controversy shall in good faith comply with any order of said Court of Industrial Relations for a period of sixty days or more, and shall find said order unjust, unreasonable or impracticable, said party may apply to said Court of Industrial Relations for a modification thereof, and said Court of Industrial Relations shall hear and determine said application and make findings and orders in like manner and with like effect as originally. In such case the evidence taken and submitted in the original hearing may be considered."

In the opinion of the Industrial Court of May 2, 1921, it said:

> "Any order made by this court, after having been put into force and effect for a period of sixty days, may be reviewed at the instance of either party and additional evidence introduced to show its practicability, its impracticability, its reasonableness or its unreasonableness. The order made in this case at this time will be made in view of that provision of the law. The

> business conditions of the day are unusual and unstable and sixty days or ninety days may bring about such changes as would require a revision of any order made herein." (Rec. 19.)

In the order by the Industrial Court of May 2, 1921, it said: "This order shall take effect and be in force on the 1st day of May, 1921, and shall continue until changed by the court or changed by agreement of the parties, with the approval of the court." (R. 23.)

Under the statute and the opinion the Packing Company, if it had put the order of the court into effect, could have made an application at the end of sixty days for a modification thereof, and there could have been a hearing at that time on the subject. It would have been the duty of that court on such further hearing, if it was found that the order did not comply with the following provision of the statute, to have changed its order accordingly. That provision is as follows:

> "All such terms, conditions and wages shall be just and reasonable and such as to enable such industries, employments, utilities or common carriers to continue with reasonable efficiency to produce or transport their products or continue their operations and thus to promote the general welfare." (Section 8 of the act.)

The improvement in wages and terms of employment naturally would have resulted in a better service from the workers. It was a fair expectation, at the time the order of the court was made, that such would be the result. Such improved service might have been so substantial as to more than make up for the increased payments from the Packing Company to its employees and to have resulted in a benefit to the Packing Company, and so greater profits might have been a factor.

The Packing Company in claiming that it would suffer loss under the order of the court is making an assertion without practical experience and based on apprehension and not upon reality. It

cannot be determined in advance of a trial that the order would have resulted in any injury to the Packing Company.

There was no evidence that at or about January 17, 1921, the time the Packing Company put its reduced wages into effect and abrogated the overtime provisions, that it made any effort to reduce wage or salary expenses, other that the wages of plant employees. On the other hand, the evidence showed an increase in central-office administration and central-office pay roll expenses of the Allied Packers, Incorporated. From January 17, 1921, to April 30, 1921, central-office administration expense was $12,562.81 and its pay roll was $5,452.77; total, $18,015.58. (Resp. Ex. C., R. 241.)

The only central-office charges outside of interest shown in the report for the fiscal year which ended October 30, 1920, was chemical control, $328.08; and general expense, $12,571.00; total, $12,899.08. For the period of three months and fourteen days these central-office expenses were greater than for the year which ended October 30, 1920. No reduction was made in the office pay roll at Topeka nor in the pay roll of salesmen (R. 208, 209.)

It would not have been improbable, if it was necessary for the Packing Company to reduce expenses, that the saving might have been made in those or in other items.

A comparison of the expenditures under several headings in the period January 17, to April 30, 1921, with the year ending October 30, 1921, shows that the expenses were proportionately higher for the shorter period ending April 30, 1921, and the increases give rise to the query whether the Packing Company, if a trial of the court's order had been made for sixty days, could not have reduced these other expenses which are proportionately higher during the later and shorter period. On this point computations have been made by the defendant in error, which are as follows:

The total of office salaries and officers' salaries for the year

ending October 30, 1920, was $72,515.83 (R. 229.) The total of the office pay roll from January 17, to April 30, 1921, was $21,274.32 (R. 241). This last figure included salaries of office employees and of officers. Apportioning these charges to the working days—that is, by excluding Sundays and holidays in the two periods—the amount per day in the year was $230.94, and in the short period was $236.38, which was 102 per cent of the other.

The cost of packing materials, wood, factory supplies and expenses for the year was $154,030.54 (R. 229), and for the short period was $54,152.33 (R. 241). Apportioned by working days, the amount per day in the year was $490.22, and in the short period $601.69, which was 123 per cent of the other.

The charge for salesmen's pay roll in the year was $33,229.35 (R. 229) and in the short period was $11,995.06 (R. 241). The amount per day in the year was $105.82, and of the short period was $133.28, which was 126 per cent of the other. The charge for other than for interest account of the central office for the year, which charge included chemical control and general expenses (R. 230), was $12,899.08. The charge for central-office administration and central-office pay roll in the short period was $18,005.58 (R. 241). The rate per day for the year was $41.08, and for the short period was $200.17, which was 487 per cent of the other.

In respondent's exhibit C there is the charge: "Less freight allowances, returned goods and brokerage, $85,759.96," for the period of January 17, 1921, to April 30, 1921. This was deducted from the amount of gross sales to get the amount of net gross sales. For the same period the pay roll of the plant was $97,930.24; of sales, $11,995.06; and of the office, $21,274.32; total, $131,199.62. The pay roll of the plant was 74.6 per cent of the total. The total expenses for the same period are given as $319,611.59. (Resp. Ex. C., R. 241, 242.) The Packing Company did not show that it had

reduced allowances, return of goods, brokerage and expenses other that the pay roll of the plant to the lowest practicable point. Whether it could have reduced these other charges and have run the business successfully could only be decided by an effort in that direction, in a short trial of the Industrial Court's order. No such effort was made.

In the evidence offered by the Packing Company to show what it estimated the increase would have been in the plant pay roll under the Industrial Court's order, if it had been put into effect for the period January 17 to April 30, 1921, the total increased payment, both on account of increase of wages, the payment of time and a half overtime and the fixing of an eight-hour basic day is claimed by it to amount to $7,099.68. (Resp. Ex. D. R., 246, 247, 248.) Of this, two-thirds was assignable to the basis of an eight-hour day and time and a half for overtime. (Finding No. 7, R. 122.)

If the plant had done about the same amount of business that it had been doing for several months previous to May 1, the increased payments which would have been made to the plant employees under the Industrial Court's order in sixty days beginning May 1 would have been on the estimate about $4,056.96.

A trial by the Packing Company of the Industrial Court's order for sixty days would have made no substantial difference in the expenditures of the Packing Company as compared to the amount of its receipts and expenditures. Its total sales during the six months ending April 30, 1921, were $2,282,736.40, and its total expenses were $559,811.04. (Resp. Ex. E., R. 242, 243.)

Allowing thirty days further for the time of hearing before the Industrial Court and a decision on the question of the modification of the order, the increased payments for the ninety days would have been a little over $6,000. In business of the size of the Packing Company, that is a very small amount.

In the exercise of public functions tests have to be made, and any increased expenses incurred in the course of such endeavors to arrive at accurate results are an essential part of administration and a duty imposed upon parties who are subject to governmental regulations.

It has been held that in matters of rate regulation of public utilities, where the actual result is doubtful, temporary trials should be made, and in such cases the public utility is bound to put into effect the rates ordered by the administrative board for the purpose of determining their effect.

Wilcox v. Consolidated Gas Co., 212 U. S. 19, 55.

Northern Pacific Ry. v. North Dakota, 216 U. S. 579.

Lincoln Gas Co. v. Lincoln, 250 U. S. 256, 269.

A Proper Exercise of the Police Power Cannot Be Defeated by a Claim of Confiscation.

The Packing Company insists vigorously that the effect of this act is to take its property and confer a portion of it upon its employees without compensation. It also contends that because it has met with losses for several years past, and was not, as it contended, operating at a profit, the order of the Industrial Court, as applied by the supreme court of the state, took its property without compensation and without due process of law, in violation of the fourteenth amendment.

Our contention, elsewhere stated, is that the Packing Company did not prove that the order of the Industrial Court would impose a loss. But if it should be assumed that it would, for the purpose of the argument, then we present the discussion under this heading.

We have already pointed out that both the commissioner and the supreme court of Kansas have found that the Packing Company failed to show by what its prior asserted loss was occasioned, or to what cause it was attributable. It has not shown whether the loss

was occasioned by general conditions in the packing industry, without reference to the question of wages—that is, declines in the market value of products—or whether it was due to accepting an improper and undue amount of the overhead and losses of the Allied Packers Company (the holding company), or an acceptance in carrying an undue portion of the excessive loss in the Macon, Ga., plant of the Allied Packers. (R. 203.)

Aside from this, however, we submit that the order of the Industrial Court, if a proper exercise of the police power over a business affected with a public interest, does not become unconstitutional by virtue of any loss of profits to the Packing Company. On this phase of the case the Packing Company's contention amounts to this—if a business is not making a profit the state is deprived of the power to regulate it in the interest of the public health, the public morals, the public safety, the public peace, and the public welfare. We do not understand such to be the effect of the decisions of this court. The same contentions have been raised as to every regulation made under the police power since the enactment of the fourteenth amendment.

The question was forcibly presented in *Mugler v. Kansas*, 123 U. S. 623, 664, 8 S. Ct. 273, 298. The contention of Mugler, as stated by Mr. Justice Harlan in that case, is as follows:

> "Upon this ground, if we do not misapprehend the position of defendants, it is contended that, as the primary and principal use of beer is as a beverage; as their respective breweries were erected when it was lawful to engage in the manufacture of beer for every purpose; as such establishments will become of no value as property, or, at least, will be materially diminished in value, if not employed in the manufacture of beer for every purpose—the prohibition upon their being so employed is, in effect, a taking of property for public use without compensation, and depriving the citizen of his property without due process of law. In other words, although the state, in the

> exercise of her police powers, may lawfully prohibit the manufacture and sale, within her limits, of intoxicating liquors to be used as a beverage, legislation having that object in view cannot be enforced against those who, at the time, happen to own property, the chief value of which consists in its fitness for such manufacturing purposes, unless compensation is first made for the diminution in the value of their property, resulting from such prohibitory enactments."

After reviewing the authorities at length, the court decided that if the act was otherwise a proper exercise of the police power of the state, the question of confiscation did not make the law unconstitutional.

In *California Reduction Co. v. Sanitary Reduction Works of San Francisco*, 199 U. S. 306, 26 S. Ct. 100, this court again stated that the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. The holding in *Mugler v. Kansas*, supra, was restated, and the following statement from that case was followed:

> "The power which the states have of prohibiting such use by individuals of their property as will be prejudicial to the health, the morals or the safety of the public, is not—and, consistently with the existence and safety of organized society, cannot be—burdened with the condition that the state must compensate such individual owners for pecuniary losses they may sustain by reason of their not being permitted, by a noxious use of their property, to inflict injury upon the community."

Continuing, the court said:

> "In Sedgwick's Treatise on Statutory and Constitutional Law the author says that 'the clause prohibiting the taking of private property without compensation is not intended as a limitation . . . of those police powers which are necessary to the tranquillity of every well-ordered community, nor of that general power over private property which is necessary for the orderly existence of all governments. It has always been held that the

> legislature may make police regulations, although they may interfere with the full enjoyment of private property, and though no compensation is given.' (pp. 434, 435.)"

In *Hadacheck v. Sebastian*, 239 U. S. 394, 36 S. Ct. 143, an ordinance of Los Angeles was upheld, prohibiting the maintenance and operation of a brickyard within a certain area. It was there contended that the manufacture of brick must be carried on where suitable clay is found, and that the clay on the property in question could not be transported to some other locality. While this was not a physical impossibility, yet such transportation of the clay and the transportation of the brick back to places where it could be used would be prohibitive from a financial standpoint. This court, however, sustained the ordinance, holding that it was a proper exercise of the police power and valid, regardless of whether from a financial standpoint it made it impossible to use the property and thus destroyed its value.

This case disposes of the contention of the Packing Company herein that the order in question, from a practical standpoint, makes it financially impossible to operate the plant at a profit. Financial impossibility, as we have seen, does not violate the fourteenth amendment, if the act and order in question are otherwise a proper exercise of the police power of the state.

In *Hebe Co. v. Shaw*, 248 U. S. 297, 39 S. Ct. 125, under the Ohio statute the prohibition on the sale of condensed skimmed milk was sustained, although thereby the business of the Hebe company in the state of Ohio was destroyed.

The police power "is a continuing one, and a business lawful today may in the future, because of the changed situation, the growth of population, or other causes, become a menace to the public health and welfare, and be required to yield to the public good."

Dobbins v. Los Angeles, 195 U. S. 223, 238, 25 S. Ct. 18, 21; 49 L. Ed. 169.

Pierce Oil Corporation v. City of Hope, 248 U. S. 498; 39 S. Ct. 172.

In the case of *Wilson v. New*, 243 U. S. 332, 37 S. Ct. 298, sustaining the Adamson act, the appellees urged with great force upon this court that section 3 of that act was a direct taking of the carrier's property without compensation, and a transfer of the same to private individuals. (See brief of appellees, pages 47-52.) The brief of the United States (p. 32-34) answered this contention by citations to the decisions in this court, holding that the prohibition upon taking property without due process of law did not extend to the proper exercise of the police power.

In *Noble State Bank v. Haskell*, 219 U. S. 104, 31 S. Ct. 186, 188, it was said:

> "It may be said in a general way that the police power extends to all the great public needs. (*Camfield v. United States*, 167 U. S. 518, 42 L. Ed. 260, 17 S. Ct. 864.) It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of those conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currency in daily business. If, then, the legislature of the state thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it."

There it was urged that the assessments of all the state banks to guarantee the solvency of such banks did not amount to taking property without due process of law. While there might be an insignificant taking of property for a private use in that case, yet it was a case in which the share of each party in the benefit of a scheme of mutual protection was sufficient compensation for the correlative burden each was compelled to assume.

From these authorities it is apparent that the order complained of is not unconstitutional as the taking of property without due process of law. The order complained of was for the purpose of securing the public peace, the public health and the public welfare. As we have pointed out elsewhere, the working conditions, the health, the hours of labor of the workers in an industry are matters concerning which the legislature may properly exercise the police power of the state.

The Packing Company by its posted notice attempted to institute a reduction in the hourly wage schedule of 10.25 per cent below the 1920 contract rate. The order complained of in this court raised the Packing Company's arbitrary hourly wage schedule 2.4 per cent above its posted notice, leaving still a reduction below the 1920 contract rate of 7.85 per cent. (R. 209, 210, 122.) Within the doctrine of *Noble State Bank v. Haskell*, supra, the increase was so slight and the advantage to the public and the Packing Company so great in improving the working conditions and the efficiency of its employees, that the taking, if any, did not fall within the provision of the fourteenth amendment. We insist, however, that in the proper exercise of the police power, a state is not limited in its application to such industries or concerns as are making a profit. In other words, the law cannot be made applicable to those concerns which are making a profit, and inapplicable to those who are losing. See concurring opinion of Mr. Justice Holmes in *Arizona Copper Co. v. Hammer*, 250 U. S. 400, 431, 39 S. Ct. 560, 561.

In *Atl. C. L. R. Co. v. Goldsboro*, 232 U. S. 548, 34 S. Ct. 364, the right of the state to interfere with contract rights, and to compel the railroad to limit the use of its property and to expend money in paving and other improvements, was in question. This court there said:

> "For it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the state to establish all regulations that are reasonably necessary

to secure the health, safety, good order, comfort or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise." (Citing cases.)

. . . . . .

"And the enforcement of uncompensated obedience to a regulation established under this power for the public health or safety is not an unconstitutional taking of property without compensation or without due process of law." (Citing cases.)

. . . . . .

"Of course, if it appear that the regulation under criticism is not in any way designed to promote the health, comfort, safety, or welfare of the community, or that the means employed have no real and substantial relation to the avowed or ostensible purpose, or that there is wanton or arbitrary interference with private rights, the question arises whether the law-making body has exceeded the legitimate bounds of the police power."

This court then held that the ordinance in question was within the police power and valid.

In *German Alliance Ins. Co. v. Lewis*, 233 U. S. 389, 34 S. Ct. 612, the right of the state of Kansas to regulate charges for fire insurance was called in question and sustained. In both the majority and dissenting opinions it was recognized:

"It will be seen, too, that the size of the business is unimportant, for the fares of a cabman, employing a broken-down horse and a dilapidated vehicle, can be fixed by law, as well as the rates of a railroad with millions of capital and thousands of cars transporting persons and property across the continent."

To show the importance and prominence given to this question in the hearing before the Industrial Court and the commissioner, we call attention to the following pages of the record where the question of the loss in 1920 was either testified to or discussed by counsel, the commissioner, or the supreme court of Kansas: R. 10, 27, 55, 59, 60, 63, 67, 68, 69, 70, 71, 73, 74, 75, 76, 77, 83, to 98 inclusive,

122, 124, 126, 127, 131, 149, 150, 151, 157, 158, 159, 160, 161, 198, 200, 203, 205, 217 to 261, inclusive.

If the contention of the Packing Company has merit, then this court's decision in the Mugler case (123 U. S. 623, 8 S. Ct. 273) was wrong, and the brewery should have been permitted to do business in Kansas, because there was a total loss to Mugler under that decision. Circuit Judge Brewer (26 Fed. 178), afterward a justice of this court, decided that property in a brewery was protected against spoliation by the fourteenth amendment, but this court did not agree with that view.

This court, in *Powell v. Pa.* (127 U. S. 678, 8 S. Ct. 992), held that property in an oleomargarine factory was not protected by the fourteenth amendment against the exercise of the police power by the state. This court held that it could not say that the act had no real or substantial relation to the protection of the public health of the state. Can this court now say that the order of the Industrial Court involved herein had no substantial relation to the public safety and welfare of the people of Kansas, and had no effect in preventing strikes, did not promote the public welfare by providing for the continuity of this and other packing industries in the state?

This court (*Murphy v. California*, 225 U. S. 623, 32 S. Ct. 697) sustained the destruction of property in a billiard hall by its decision that the state had the right to say where such business should be carried on.

This court (*Reimnan v. Little Rock*, 237 U. S. 171, 35 S. Ct. 511) sustained the impairment of the value of the livery stable when it held that the city of Little Rock might compel the removal of the livery stable from a locality in the city where it had been lawfully located to another place where it was less obnoxious to the people.

The order in this case is a regulation by limiting hours of labor

and slightly increasing wages. It is not a total destruction of property, which this court upheld in the above cases.

If there can only be regulation of an industry affected with a public interest when the business is profitable, and the regulation must cease when it is unprofitable, then the packers and stockyards act of 1921 will have a somewhat difficult course to run. The Big-Five Packers, by their public statements, had a profit of over $55,000,000 in 1917, and could have been regulated in that year. In 1918 they had a profit of $50,000,000 and could have been regulated then. In 1919 four of them made a profit of $15,000,000 and could have been regulated, but the Cudahy Company lost almost $3,000,000 that year and could not have been regulated. In 1920 four of the five lost over $55,000,000, and none of them could have been regulated except the Armour Company, which made $250,000 profit that year. In 1921 all of them had losses amounting in the aggregate to $59,000,000 and none of them could have been regulated. In 1922 three of them each made a small profit and could have been regulated, but the Armour Company would have been free, for its losses that year were over $23,000,000.

The commissioner, in his report, paragraph 13 (R. 126), said there was no evidence from which a definite deduction could be made of why the business of the Packing Company had been unprofitable for three years. There was reference to general unfavorable market conditions, and the losses in 1920 were accounted for by the commissioner in the combination of the depreciation in market value of stocks on hand and the bonus and extra pay for overtime covered by the contract of May 10, 1920. The supreme court of Kansas in its opinion (R. 149, 150) also found that the evidence does not show what caused the loss of the company in 1920. It also found that because there was a loss that fact alone did not prevent a regulation of the Packing Company.

Classification and Equal Protection of the Law.

The Packing Company complains that the Industrial Court act is novel, but novelty does not render a law unconstitutional (*Arizona Copper Co. v. Hammer*, 250 U. S. 400, 39 S. Ct. 553). The Packing Company objects to the act because it is claimed it does not affect employers and their employees alike. "To complain of a ruling, one must be made a victim of it." (*Lehon v. Atlanta*, 242 U. S. 53, 37 S. Ct. 71.)

Classification is proper, and, unless arbitrary, does not deny the equal protection of the law. The same contention that the law did not affect the employer and the employee alike was raised in *Wilson v. New*, supra; in *Mountain Timber Co. v. Wash.*, 243 U. S. 319, 37 S. Ct. 269 (compulsory insurance), and in other cases too numerous to mention.

It was also the principal contention in *Arizona Copper Co. v. Hammer*, 250 U. S. 400, 39 S. Ct. 553, where it was urged that such employers' liability act awarded compensation for injuries to the employee out of the gross receipts from the business, although the employer was exposed to injuries equally with the employee. The discrimination, however, was held not to render the law unconstitutional.

On the question of classification, this court, in *Dominion Hotel v. Arizona*, 249 U. S. 265, 39 S. Ct. 273, said:

> "The fourteenth amendment is not a pedagogical requirement of the impracticable. The equal protection of the laws does not mean that all occupations that are called by the same name must be treated in the same way. The power of the state 'may be determined by degrees of evil or exercised in cases where detriment is specially experienced.' (*Armour & Co. v. North Dakota*, 240 U. S. 510, 517, 36 S. Ct. 440, 60 L. Ed. 771, Ann.Cas. 1916D, 548.) It may do what it can to prevent what is deemed an evil, and stop short of those cases in which the harm to the few concerned is thought less important than the harm to the

public that would ensue if the rule laid down were made mathematically exact. The only question is whether we can say, on our judicial knowledge, that the legislature of Arizona could not have had any reasonable ground for believing that there were such public considerations for the distinction made by the present law. The deference due to the judgment of the legislature on the matter has been emphasized again and again. (*Hebe Co. v. Shaw*, 248 U. S. 297, 303, 39 S. Ct. 125, 63 L. Ed. 255.) Of course, this is especially true when local conditions may affect the answer, conditions that the legislature does, but that we cannot, know."

This court has repeatedly held that the legislature possesses wide discretion in classifying the objects affected by the laws enacted, and that it may adopt any classification which is not wholly arbitrary and unreasonable.

"We have declared so often the wide range of discretion which the legislature possesses in classifying the objects of its legislation that we may be excused from a citation of the cases. We shall only repeat that the classification need not be scientific nor logically appropriate, and if not palpably arbitrary and is uniform within the class, it is within such discretion." (*Mutual Loan Co. v. Martell*, 222 U. S. 225, 235.) See, also, *Louisville & Nashville v. Melton*, 218 U. S. 36, 55, and cases cited.

The classification specified in the Industrial Court act, section 30, is reasonable and proper. The act supplies to the manufacture of food products, clothes, fuel, transportation, and public utilities. There are no exceptions in the act, but all those engaged in the classes specified are included. That other industries might have properly been included does not invalidate the act, nor can the Packing Company complain because millers and manufacturers of clothing are included in the act. The constitutionality of the act is not open to attack on grounds which might possibly arise, but which do not affect the Packing Company.

The Packing Company complains that in Howat's Case, 109 Kan. 376, the supreme court of Kansas held that the mills of Kansas are

affected with the public interest under the act in question, while in *Howard v. Schwartz*, 77 Kan. 599, a different holding was formerly made. As the Packing Company, however, is not operating a mill, but a packing house, it cannot complain of the effect of the act on the milling industry. (*Arizona Copper Co. v. Hammer*, 250 U. S. 400, 39 S. Ct. 553; (*Lehon v. Atlanta*, 242 U. S. 53, 37 S. Ct. 72.) Whether a change in the statute or conditions occasioned the difference in the two decisions of the supreme court of Kansas is not material. It is sufficient to say that the last decision of the supreme court of Kansas is controlling. As we have pointed out, under the decisions of this court the alleged discrimination between the treatment of employer and employee does not invalidate the act.

Freedom of Contract.

The question for determination in this case is whether or not the legislative action has a reasonable relation to the governmental authority to further public health, public morals, public safety, public peace, public convenience and the public general prosperity. If it has, the doctrine of freedom of contract cannot make the act unconstitutional. The Packing Company has cited, on page 45 of its brief, a list of authorities sustaining the general right to make a contract in relation to its business. We shall not attempt to distinguish these cases ourselves, but direct the court's attention to the case of *Prudential Ins. Co. v. Cheek* (decided June 5, 1921), 42 S. Ct. 516, in which all but one of the cases relied upon by the Packing Company are carefully distinguished:

> "Previous decisions of this court are far from furnishing support for the contentions of plaintiff in error. *Allgeyer v. Louisiana*, 165 U. S. 578, 17 S. Ct. 427, 41 L. Ed. 832, related to legislation of a wholly different character and contains nothing that bears upon this. *Lochner v. New York*, 198 U. S. 45, 25 S. Ct. 539, 49 L. Ed. 937, 3 Ann. Cas. 1133, dealt with a statute concededly valid, if enacted in the interest of the pub-

lic health, and held it void on the ground that in truth it was not, within the fair meaning of the term, a health law, but was an illegal interference with the right of individuals to make contracts upon such terms as they might deem best. *Adair v. United States*, 208 U. S. 161, 174, 175, 28 S. Ct. 277, 52 L. Ed. 436, 13 Ann. Cas. 764, and *Coppage v. Kansas*, 236 U. S. 1, 17, 35 S. Ct. 240, 59 L. Ed. 441, L. R. A. 1915C, 960, dealt with statutes—the former with an act of congress making it criminal for a common carrier in interstate commerce to discharge an employee because of his membership in a labor organization; the latter with a state law making it criminal to prescribe as a condition upon which one might secure or retain employment that the employee should agree not to become or remain a member of any labor organization while so employed, and this in the absence of contract between the parties, coercion on the part of the employer, or incapacity or disability on the part of the employee. In accord with an almost unbroken current of authority in the state courts holding statutes of that character to be invalid, this court came to a like conclusion. In the latter case there was a direct interference with freedom in the making of contracts of employment not asserted to have relation to the public health, safety, morals or general welfare, beyond a purpose to favor the employee at the expense of the employer, and to build up the labor organizations, which we held was not properly an exercise of the police power. This statute, in making it criminal, as it did upon the construction adopted and applied, for an employer to prescribe as a condition of employing or retaining a man competent and willing to assent to the condition, that he should agree not to become or remain a member of a labor organization while so employed, the employee being subject to no incapacity or disability, but, on the contrary, free to exercise a voluntary choice, in effect made it a compulsory and unwelcome term of the employment that the employee must be left free to join a labor union, membership in which reasonably might be expected to interfere materially with the member's fidelity to his employer."

Again, in *C. B. & Q. R. Co. v. McGuire*, 219 U. S. 549, 31 S. Ct. 259, it was said:

"The right to make contracts is subject to the exercise of the powers granted to congress for the suitable conduct of mat-

ters of national concern; as, for example, the regulation of commerce with foreign nations and among the several states. *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 228-231, 44 L. Ed. 142-144, 20 Sup. Ct. Rep. 96; *Patterson v. The Eudora*, 190 U. S. 174-176, 47 L. Ed. 1006, 1007, 23 Sup. Ct. Rep. 821; *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 186, 55 L. Ed. —, 31 Sup. Ct. Rep. 164; *Louisville & N. R. Co. v. Mottley* [decided this day], 219 U. S. 467, 55 L. Ed. —, 31 Sup. Ct. Rep. 265.)

"It is subject, also, in the field of state action, to the essential authority of government to maintain peace and security, and to enact laws for the promotion of the health, safety, morals and welfare of those subject to its jurisdiction. This limitation has had abundant illustration in a variety of circumstances."

This statement is followed by a long citation of instances in which the police power of the state has been upheld in its interference with the right to contract.

From these authorities it is apparent that unless the legislative act is arbitrary and has no reasonable relation to a purpose which it is competent for government to effect, this court will sustain the constitutionality of the state act. As we have already established, the legislative action in question did have a reasonable relation to the continuance of the public peace, the public welfare, the public prosperity, the public health, and even the public morals. The act complained of is unquestionably constitutional and within the power of the state.

The Packing Company complains that an employee may quit at any time, while the employer cannot cease employing. As stated on page 26 of the Packing Company's brief, the contention is this:

"The point the Packing Company urges is that this statute denies the equal protection of the law to employers by putting them in a class which is deprived of the freedom of contract with reference to wages, hours and conditions of labor previously enjoyed, whilst leaving to employees their constitutional liberty of contract."

There is nothing, however, in the order or act complained of which requires the Packing Company to hire a definite number of persons. It can at any time, when business justifies it, reduce the number of persons employed to meet the needs of the business. In this respect it has the same right the employee has to quit work. The employee can stop work at any time, so long as it is not part of a general conspiracy or scheme to effect a strike. On the other hand, the Packing Company has the right at any time to reduce the number of persons employed, so long as it is not a part of a purpose to defeat the Industrial Court act. Stated in another way, the purpose of the act is to prevent lockouts by employers, as well as strikes by the employees. So the complaint that the employer is deprived of the freedom of contract with reference to wages, hours and conditions of labor previously enjoyed is without foundation in so far as constitutionality of the act is concerned. The employer has no vested right in the conditions which obtained at the common law and prior to the enactment of the statute. (*Arizona Copper Co. v. Hammer*, 250 U. S. 400, 39 S. Ct. 553.) The Packing Company contends and admits that this is an emergency statute, as interpreted by the supreme court of Kansas, and can be applied only in the event of emergency.

In *Wilson v. New*, 243 U. S. 332, 37 S. Ct. 298, freedom of contract with reference to wages was taken away from the railroads in an emergency.

Freedom of contract as to wages has also yielded to state action in those matters held not to be against the governmental power, but in aid thereof, and as to which the government could act, such as: Measuring coal before screening so as to better fix the miners' wages (*McLean v. Ark.* 211 U. S. 539; *Rail & River Coal Co. v. Yaple*, 236 U. S. 338). Redeeming in cash store orders issued for wages (*Knoxville Iron Co. v. Harbison*, 183 U. S. 13). Paying em-

ployees in cash at certain rates when they are discharged (*St. L. I. M. & S. R. Co. v. Paul*, 173 U. S. 404; *Keokee, etc., Co. v. Taylor*, 234 U. S. 224); and at all times as often as twice a month (*Erie R. Co. v. Williams*, 233 U. S. 685); and in quantity rates as coal is screened, instead of weight before screening, or weight as ascertained in some other way (*McLean v. Ark.*, 211 U. S. 539; *Schmidinger v. Chi.*, 226 U. S. 578; *Rail & River Coal Co. v. Yaple*, 236 U. S. 338). Barring a railway in a personal-injury suit from pleading as a defense the receipt of some fraternal benefit (*C. B. & Q. R. Co. v. McGuire*, 219 U. S. 549). And by adding to the cost of manufacturing in addition to wages, compensation to the employees for injuries occurring in the course of employment without regard to the question of negligence (*Arizona Copper Co. v. Hammer*, 250 U. S. 400, 39 S. Ct. 553; *Mountain Timber Co. v. Wash.*, 243 U. S. 219; *Thornton v. Duffy*, 254 U. S. 361, 41 S. Ct. 137).

Freedom of contract as to hours and conditions of labor has had to yield to the governmental power where the police power has prescribed: Eight-hour day as basic day, with overtime thereafter (*Wilson v. New*, 243 U. S. 332). Ten-hour day in mills, factories and manufacturing establishments, and time and a half for overtime (*Bunting v. Ore.*, 243 U. S. 426). Sixteen hours continuous service on railroads (*B. & O. R. Co. v. I. C. C.*, 221 U. S. 612; *M. K. & T. v. U. S.*, 231 U. S. 112). Eight hours per day in mines and smelters (*Holden v. Hardy*, 169 U. S. 366). Maximum hours for labor for women (*Mueller v. Ore.*, 208 U. S. 412; *Bosley v. McLaughlin*, 236 U. S. 385; *Miller v. Wilson*, 236 U. S. 373; *Riley v. Mass.*, 232 U. S. 671). Eight-hour day on public work (*Atkin v. Kan.*, 191 U. S. 207). Liability for injury under workmen's compensation act, regardless of question of negligence (*Arizona Copper Co. v. Hammer*, 250 U. S. 400; *New York Central Ry. Co. v. White*, 243 U. S. 188, 61 L. Ed. 667; *New York Central Ry. Co. v. Bianc*,

250 U. S. 596). The time and place of paying seamen's wages (*The Bark Eudora*, 190 U. S. 169).

See, also:

Central Lumber Co. v. South Dakota, 226 U. S. 157; 57 L. Ed. 164.

Middleton v. Texas Power and Light Co., 249 U. S. 152; 63 L. Ed. 527, 534.

German Alliance Insurance Co. v. Lewis, 233 U. S. 389; 58 L. Ed. 1011.

National Safety Deposit Co. v. Stead, 232 U. S. 58; 58 L. Ed. 504, 511.

Manigault v. Ward Co., 199 U. S. 472; 50 L. Ed. 274.

Grand Trunk W. R. R. Co. v. Railroad Commissioners of Indiana, 221 U. S. 400; 55 L. Ed. 786.

Block v. Hirsh, 256 U. S. ——; 41 Supt. Ct. Rep. 438.

Marcus Brown Holding Co. v. Feldman, 256 U. S. 170; 41 Supt. Ct. Rep. 465.

Levy Leasing Co. v. Siegel, —— U. S. ——, March 20, 1922; Adv. Op. U. S. Sup. Ct. No. 11, pp. 326, 329.

This yielding of freedom of contract as to working conditions is also exemplified in the various factory acts and safety-appliance acts which have been sustained, but as to which citation of authority is unnecessary.

Hours and Overtime.

In *The Slaughter House Cases*, a statute of Louisiana which granted to the Crescent City, etc., Company a monopoly for the operation of stockyards and meat-packing plants in a district at and near the city of New Orleans, such yards and plants to be located outside the city, was sustained as a proper exercise of police power to protect the public health and comfort. (*The Slaughter House Cases*, 16 Wallace 36, 21 L. Ed. 394.)

It could be inferred without evidence that work in a packing house, to some extent at least, is injurious to the health of the workers. But they encounter offensive and exhausting conditions which do not reach the public.

The third paragraph of the order of the Court of Industrial Relations of May 2, 1921, is as follows:

> "A basic working day of eight hours shall be observed in this industry; but a nine-hour day may be observed not to exceed two days in any one week without penalty: *Providing, however*, That if the working hours of the week shall exceed forty-eight in number all over forty-eight shall be paid for at the rate of time and one-half; furthermore, in case a day in excess of the eight-hour day shall be observed more than two days in one week, all over eight hours, except for said two days in said week, shall be paid for at the rate of time and one-half, even though the working hours of the week may be forty-eight hours or fewer." (R. 21.)

This provision was set out in the opinion (R. 19). The trying, offensive and unhealthful conditions under which the work was done were testified to by the following witnesses: Albert H. Martin (R. 194); Katherine Morozzo (R. 194, 195); Mrs. Susie B. Knisely (R. 196, 106); H. W. Sawyer (R. 196, 197); E. W. Jimmerson (R. 99); A. S. Blackwell (R. 110); O. A. Chase (R. 113).

On this question of overtime the Industrial Court said in its opinion:

> "Overtime should not be considered in the light of extra pay; the wage should be fair on the eight-hour basic day. Overtime should be considered as a penalty upon the company to prevent the long hours and exhaustion of the workers. It is evident, therefore, that the company should not be penalized when by reason of circumstances over which it has no control it may be necessary to run the plant a little longer than the eight-hour day in order to save loss which would otherwise occur. On the other hand, there must be some provision which would prevent the management from taking advantage of that situation to work long hours for the mere purpose of making extra profits.

> The matter of overtime should also be so adjusted as that it would not be a temptation to an unfaithful worker to slack his work during the eight-hour period in order to reap the reward of the higher wage in the ninth and tenth hours." (R. 18.)

The commissioner made no finding on the point. Some of the witnesses testified that employees were required to work at times from eight to twelve hours per day, and they complained of this: W. E. May, who said he worked from one to fifteen hours (R. 184-185); Joseph B. Sands (R. 190, 191); Albert H. Martin (R. 193, 194); Wiley Shaffer (R. 194); Katherine Morozzo (R. 194, 195); Mrs. Daisy Foster (R. 195); Mrs. Susie Knisely (R. 195, 196, also 106); H. W. Sawyer (R. 196); M. J. Oswald (R. 102, 103); A. W. Q. Smith (R. 104); John Nidens (R. 107, 108); W. Reesor (R. 109); A. L. Blackwell (R. 109, 110); W. P. Graham, who said he worked from ten to thirteen hours (R. 111, 112).

E. W. Jimmerson, the district president of district No. 4 of the Amalgamated Meat Cutters and Butcher Workmen of North America, made the statement, which applied to conditions in packing houses generally, that the packing-house worker had been working ten, eleven and twelve hours a day until the decision of Judge Alschuler, making a basic day of eight hours, was put into effect, on or about May 5, 1918. Mr. Jimmerson also said that his organization would go down in defeat before it would sacrifice one minute of the eight-hour day (R. 190). From the evidence of the foregoing employee witnesses, as well as W. S. Glover (R. 110, 111), the employees did not want to work over eight hours a day.

At the hearing before the Industrial Court the Packing Company made a proposition to adopt the forty-eight-hour week, and that all time over forty-eight hours should be paid for at the rate of time and a half, but refused to consent to any guaranty of hours per week (R. 117).

The Industrial Court found that the employees changed their clothing and washed themselves after work on their own time, and this took from thirty minutes to an hour a day (R. 12, 17). See testimony of E. W. Jimmerson (R. 99).

Several witnesses testified that for several months past they had been driven at their work by the foremen. W. E. May said: "The old foreman said, 'Come on boys; we will do the work.' These fellows stand around with a white coat on, do nothing, and say, 'go to it,' and whoop and hurrah all day long like we was cattle." (R. 126.) Hunter Blair (R. 187, 188); Joseph B. Sands (R. 191); M. J. Oswald (R. 103); J. T. Sheer (R. 104); A. L. Blackwell (R. 110).

The commissioner found: "Since January 1, 1921, the policy of the superintendent of the plant has been to require more work or harder work from the employees." (Finding 13, R. 126.)

On the question of the practicability of the Packing Company lessening the number of days on which employees would be required to work more than eight hours, C. W. Sheehan, its production superintendent, testified: That outside of the killing gang, if it was not in the season when their work was heaviest, there would be no disadvantage to the eight-hour day. They have regular hog pens and cattle pens to hold the live stock as they come in. They do not have to kill them the next day after they arrive, but were subject to loss in the way of shrinkage or disease. The plant was prepared to feed them for a day or two. Within certain limits they could control the quantity of killing from day to day. Cattle will not eat or drink under changed conditions, but hogs will fatten in the stockyards (R. 214). He also said that a number of employees would shirk to get overtime (R. 79).

Charles Wolff, jr., the president of the Packing Company, said:

> "We have an understanding with our shippers that they are to notify us and keep us fully informed as to when they expect

to make a shipment, and we can control the live stock receipts to a certain extent. It has been our experience that a number of shippers, regardless of this understanding, ship us without notification. Then there are others also (who) ship us notwithstanding the fact that we notify them to the contrary. It has been our experience that very often our receipts will exceed our estimated receipts by 1,000 head of hogs. The wagon receipts run from twenty-five per cent to thirty per cent of the total, or approximately 900 a week. Sometimes it is less." (R. 215; see, also, R. 59.)

The commissioner found that it was impracticable to use more than one shift of workmen, and except to a limited extent the Packing Company could not control, or did not have advance notice of the quantity of live stock to be delivered, and that it was practically necessary that all live stock purchased be killed within a limited time after its receipt, and that when killed the operations should continue without cessation until the meat was placed in refrigeration. And further:

"Therefore, the commissioner finds that the hours of employment of the workers generally in the plant are governed by conditions over which the respondent has no practical control, and that the only effect of the basic eight-hour day would be upon the rate of wages required to be paid; that, however, it might be regarded in other cases, the basic day in this order is a wage provision rather than a working condition." (Finding No. 5, R. 121, 122.)

Under the practice of the supreme court of Kansas the findings of a commissioner are merely advisory. This finding of the commissioner was not approved, but was in effect disapproved by the supreme court.

The second opinion by the supreme court, which was after the trial and report from the commissioner (111 Kan. 501), stated:

"The defendant should be compelled to pay the wages fixed in the order made by the Court of Industrial Relations and should be compelled to establish the hours of labor there fixed,

and should look elsewhere to recoup its losses and find the means of operating its plant at a profit." (R. 151.)

While there was the testimony of Mr. Wolff as to the request from the Packing Company to the shippers to govern times of shipments, it did not appear that the company had made any strong and systematic effort in this direction. The holding over of the cattle and hogs after receipt would entail a shrinkage on the cattle, though the hogs might gain in weight, and there would be some liability to disease. Aside from the question of disease, the problem after the live stock was received was one of profit and loss. To hold them longer so as to limit the hours of the working day might decrease the profit. In order to avoid that part of the difficulty caused by loss of profits, the Packing Company expected its employees to work overtime, and did not propose to allow them any extra rate of pay for overtime. An extra rate of pay would have the tendency to cause the Packing Company to make greater efforts to secure co-operation by shippers in distributing shipments, so that there would not be an excessive rush of live stock at any time and would also have a tendency to cause the Packing Company to hold over some of the live stock for another day or two before killing rather than to pay the extra rate to the employees. There was no substantial contradiction to the testimony showing the injurious effects to the workmen on account of laboring over eight hours a day. To avoid this injury everything practicable should be done by the Packing Company. Where the Packing Company fails to make an adequate effort to distribute receipts of live-stock for slaughtering, or chooses to make a greater profit by the quick handling of the live stock than it otherwise would, it is not just to the laborers, who are thus required to incur the exhaustion and risk to their health from working extra hours in that arduous occupation. If that risk is put upon them, then it is just that the Packing Company should pay an additional

rate which may partially compensate the workmen for the detriment they suffer.

While the opinion of the supreme court does not discuss this point, it does state that the employer should not transfer his loss to the employees. To require the workmen to work overtime, and in addition to do it without an additional rate of pay, is an attempt to make such a transfer.

While there is liability to disease, clean conditions of the stockyards, proper feeding and watering of the live stock, and avoidance of overcrowding will tend to reduce that risk, and to some extent the danger of disease is thereby subject to the control of the Packing Company.

The order of the Industrial Court permitted two days of nine hours work per week without time and a half for overtime. On other days time and one-half applied beyond eight hours. If the working hours of the week should exceed forty-eight they were required to be paid at the rate of time and a half for the excess over forty-eight hours. (Par. 3, R. 21.) This provision gave an opportunity to the Packing Company to adapt its operation, in part at least, to the eight-hour basic day.

Because the business shows a temporary loss confers no right on the employer to transfer his loss to his employees by compelling them to work at an unfairly low rate of wages or for excessive hours. If he makes heavy profits he does not divide them with his workers. If he suffers a temporary loss he should bear it and not impose it upon his employees. A fair wage is a just and necessary part of the cost of the business. Proper working hours are an essential in the conduct of the business.

CONCLUSION.

Kansas took a forward step in the suppression of the liquor traffic when it adopted an amendment prohibiting the manufacture and sale of intoxicating liquors as a beverage. It was claimed that it violated constitutional rights because it did not provide for compensation for property that was destroyed by the act. This court, in the Mugler case, determined the act constitutional. Kansas provided that eight hours should constitute a day's work on public improvements, and this court (*Atkin v. Kansas*, 191 U. S. 207) said that the state could do this. Kansas fixed the rates of fire insurance companies (*German Alliance Insurance Co. v. Lewis*, 233 U. S. 389), and this court decided that the state had such power.

We believe that it has been established by the record that the order of the Kansas Industrial Court was not clearly unreasonable and arbitrary, but that it was calculated to promote the public welfare and preserve the peace of the state. Size and volume of business affected with a public interest has not been a prerequisite for the exercise of the police power by the state (*Brass v. North Dakota*, supra). The Packing Company had a business, and, as it said in its answer filed herein to the complaint of its employees, any interruption of its business would result in hardships and loss to the farmers and live-stock producers of the state by impairing an open, free market for live stock, and would impair the Packing Company's ability to furnish food supply. A strike in this plant would have produced this result, so the order of the Industrial Court was to prevent this calamity. The public interest was manifest and the emergency was present. Did the means employed have a substantial relation to the ostensible purpose? The action taken certainly was anything but arbitrary. A complaint was filed, an answer made, in which a full investigation was demanded. That investigation was

had, witnesses were heard, and a temporary order made, which expired when the permanent order was entered on May 2, 1921. The Industrial Court then filed a petition in mandamus in the supreme court, on which an alternative writ was issued and a return made thereto. The supreme court (R. 31) decided to take additional evidence, and a commissioner was appointed for that purpose. The questions of law were passed upon by the supreme court (R. 32). The evidence before the Industrial Court, taken before this order was made (R. 183 to 260, inc.), was full and complete, but the commissioner took additional evidence (R. 47 to 118, inc.), and again went into all the facts. The report of the commissioner (R. 118) is very elaborate and instructive, and the opinion of the court (R. 144) sustained the order in certain parts and refused the mandamus as to others. Certainly due process was not wanting, and the proceeding was not arbitrary. Many objections have been made in the brief of plaintiff in error that do not concern it and which it has no right to raise. The order, however, of which it complains was an effort made by the state to use the machinery provided by law to promote the public welfare and preserve its peace and safety. It is an attempt to do within the state, on matters within its control, what has been demanded in the nation on matters within the jurisdiction of congress. The events which we have been considering occurred in 1921. In 1922 we had the strike of the railroad employees and the great coal strike. After those strikes were over, President Harding in his message to congress on December 8, 1922 used the following language:

> "I wish I could bring to you the precise recommendation for the prevention of strikes which threaten the welfare of the people and menace public safety. It is an impotent civilization and an inadequate government which lacks the genius and the courage to guard against such a menace to public welfare as we experienced last summer. . . . Public interest demands that

> ample power shall be conferred upon the labor tribunal, whether it is the present board or the suggested substitute, to require its ruling to be accepted by both parties to a disputed question."

Congress will no doubt give careful consideration to the subject thus brought to its attention by the President, for the demand is widespread that either the Labor Board or some other tribunal shall be given authority to prevent strikes.

A Coal Commission was appointed under authority of the act of congress to consider the questions growing out of that great strike. In January of this year that Commission made a preliminary report that contains the following significant words:

> "The commission believes that the public interest in coal raises fundamental questions of the relation of this industry to the nation and of the degree to which private right must yield to public welfare. It may be that both private property in an exhaustible resource and labor in a public-service industry must submit to certain modifications of their private rights, receiving in return certain guarantees and privileges not accorded to purely private business or persons in private employ."

If the coal industry is affected with such a public interest, why is not the meat industry of like interest to the states? Kansas in the act authorizing the Industrial Court made no distinction between fuel and food. Both are declared to be industries affected with a public interest. This court has said (*Stafford v. Wallace*, supra) that the various stockyards of the country are great national public utilities, and promote the flow of commerce from the ranches and farms of the West to the consumers in the East; that they conduct a business affected by a public use of a national character and subject to national regulation; that it had so been settled since the case of *Munn v. Illinois*. Congress has regulated part of the business of the packing industry. It has not attempted to regulate hours of labor, wages or working conditions in that industry. Kansas has attempted to do so in the order challenged in this case.

Can congress regulate the business going into and out of the packing houses, and the state be impotent and helpless in the regulation of the hours of labor, wages and working conditions in those plants?

We have confined our discussion to the order involved, and have given the reasons why we believe it is within the police power of the state of Kansas as applied to a business affected with a public interest to take this step.

There is a widespread interest in the outcome of this case. The subject is of paramount importance. There was a railroad strike twenty-eight years ago that was ended by injunctions issued by a federal court. This court, in the Debs case, approved the steps then taken by the Attorney-general of the United States. A similar course was taken by the Attorney-general in the railroad strike of last year. In twenty-eight years we have made much progress under the law in the regulation of rates, charges and practices of the railroads, and it is known what can be done legally after the strike has begun and overt acts have been committed. The nation has made no progress in preventing strikes before damage has been done. The President has demanded the creation of a tribunal with power to deal with the strike before the overt act has been committed. He well says that it is an impotent civilization and an inadequate government which lacks the genius and courage to guard against such a menace to public welfare as we witnessed last summer. Kansas has created such a tribunal by the act authorizing this order. The plaintiff in error challenges the power of the state to create such a tribunal. It is against what is proposed in the Kansas act and in this order. Its argument leads to the conclusion that it is beyond the power of the state and the nation to prevent strikes and preserve the peace and safety of the public. Following the doctrine laid down in its brief, the states and nation are helpless in this great emergency. The public must continue to suffer from interruptions brought about by controversies between employers and employees.

The supreme court of Kansas decided that the course taken by the Industrial Court following the coal strike was justified. This court (*Howat v. Kansas*, —— U. S. ——), declined to interfere, holding that a federal question was not involved. We are now here in this case to determine whether the order complained of is within the police power of the state. The question involved is of the greatest importance. We submit the case to you, believing that all that has been done is within the power of a sovereign state, solicitous of the welfare, peace and safety of its citizens.

Respectfully submitted.

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APPENDIX A.

Production of Cattle, Swine and Sheep in Kansas. Meat Packing in Kansas.

This information as to live stock in the next paragraph is taken from page 22 of the Bulletin of Census of the Department of Commerce, pertaining to the Fourteenth Census of the United States in 1920, and gave information concerning "Agriculture: Kansas, Statistics for the State and its Counties, prepared under the supervision of William Lane Austin, chief statistician for Agriculture," published at Washington, 1921.

"Agriculture: Kansas, County Table II. Live stock on farms and ranges, 1920."

Total number of cattle held in Kansas, 2,975,390. Total value in dollars, $154,004,831; of these, the beef cattle number 2,045,637 and the total value was $103,663,504. The total number of dairy cattle, 929,753, and the total value was $50,341,327. The total number of swine was 1,733,202; the total value was $29,400,418. The total number of sheep was 361,102, and the total value was $4,165,722.

The following figures as to live stock are taken from the World Almanac for 1922, issued by the New York *World*, and purport to be taken from the United States Census returns as of January 1, 1920.

The states in which were held a larger number of cattle than Kansas according to that statement, as of January 1, 1920, were: Texas, 6,249,443; Iowa, 4,567,708; Nebraska, 3,167,279; Wisconsin, 3,050,829; Minnesota, 3,021,469: The number of head held in Kansas was given as 2,975,390. Next following Kansas was Illinois,

2,803,289; and next Missouri, 2,781,644. (Page 209, World Almanac, 1922.)

In the same statement statistics are given as to swine held in the various states as of January 1, 1920. The number for Kansas was stated as 1,733,202. Eleven states held more swine than Kansas.

In the same statement are figures concerning sheep held as of January 1, 1920. The number for Kansas was given as 361,102. Twenty-seven states held more sheep than Kansas. (Page 209, World Almanac, 1922.)

The following figures are taken from a pamphlet issued by the Bureau of Census, Department of Commerce, giving figures obtained from the Fourteenth Census of the United States, prepared under the supervision of Eugene F. Hartley, chief statistician for manufactures, published at Washington 1922. These figures show the amount of slaughtering and meat packing done in establishments engaged in that work and doing a wholesale business (page 3):

> "Principal states, ranked by value of products: Table 4 shows the number of wage earners, value of products, and value added by manufacture, by states, for 1919, ranked according to value of products. The industry is well distributed through the United States, as there were one or more establishments in all states except New Hampshire and New Mexico. In value of products, however, the industry is largely centered in a few states. Illinois is the most important of these, and reported in 1919, 30.2 per cent of the total value of products for the United States. The first five states, Illinois, Kansas, Nebraska, New York and Missouri, reported products valued at $2,518,263,652, or 59.3 per cent of the total for the country in 1919, and represented about the same proportion in 1914.
>
> "There was an increase in value of products in each state in the industry except Vermont, and a great many changes in per cent distribution. Most noticeable was Nebraska, whose production was third in 1919, taking the place occupied by New York in 1914, and Ohio, which advanced to seventh place, the one held by Pennsylvania in 1914. The greatest relative growth, however, was in Minnesota, which occupied eighth place in

1919 and thirteenth in 1914. In fact the only states retaining the same per cent distribution at each of these census periods were Illinois, Kansas, Missouri, Iowa, South Dakota, Montana, and Vermont. The states of North Dakota, Oklahoma and South Dakota had larger value of products than some of those shown in the table, but the figures could not be published separately without disclosing the operations of individual establishments."

(Page 4 of this report.)

The average number of wage earners in 1919 engaged in the slaughtering and meat-packing industry in the states which lead in this manufacture were as follows:

Illinois, 54,179; Kansas, 17,805; Nebraska, 10,122; Missouri, 8,290; Iowa, 7,134; and New York, 6,646. Kansas was second.

The value of meat products in the leading states were:

Illinois, $1,284,103,000; Kansas, $427,663,000; Nebraska, $303,849,000; New York, $256,038,000; Missouri, $246,610,000; Iowa, $226,362,000. Kansas was second. (Table 4, of page 5 of the above report, on slaughtering and meat packing.)

The value of meat products for the six leading cities in 1919 was:

Chicago, $1,083,090,049; Kansas City, $381,694,618; Omaha, $288,092,054; New York, $185,244,898; Indianapolis, $104,805,746; St. Louis, $96,044,220. (Table 5 page 6, id.) Kansas City was second. (The slaughtering and meat-packing industry at Kansas City is within Kansas, with trifling exceptions.)

The gross weight of beeves slaughtered at meat-packing and slaughtering establishments in the states leading in that industry in 1919 were:

Illinois, 2,659,097,972 pounds; Kansas, 1,308,139,952 pounds; Nebraska, 939,241,879 pounds; New York, 716,251,632 pounds; Missouri, 593,081,874 pounds. Kansas was second. (Table 16, page 11, id.)

Calves: Illinois, 136,186,990 pounds; New York, 89,437,057 pounds; Texas, 89,168,798 pounds; Kansas, 88,715,777 pounds; Kansas was fourth. (Table 16, page 11, id.)

Sheep: Illinois, 344,552,918 pounds; Nebraska, 125,810,414

pounds; New York, 113,229,112 pounds; Kansas, 93,046,082 pounds. Kansas was fourth. (Table 16, page 11, id.)

Swine: Illinois, 2,442,064,157 pounds; Kansas, 975,469,217 pounds; Iowa, 789,960,312 pounds; Missouri, 756,619,010 pounds; Nebraska, 720,638,077 pounds. Kansas was second. (Table 16, page 12, id.)

The cost of beeves, calves, sheep and swine slaughtered in 1919:

Beeves: Illinois, $292,428,922; Kansas, $135,490,811; Nebraska, $102,233,077; New York, $99,271,131. Kansas was second. (Table 17, page 12, id.)

Calves: Illinois, $17,310,534; New York, $14,248,013; Kansas, $9,444,961; Texas, $8,815,216; Kansas was third. (Table 17, page 12, id.)

Sheep: Illinois, $49,135,520; Nebraska, $17,430,376; New York, $16,881,438; Kansas, $12,583,635. Kansas was fourth. (Table 17, page 12, id.)

Swine: Illinois, $427,857,730; Kansas, $177,542,104; Iowa, $141,345,852; Missouri, $139,204,440. Kansas was second. (Table 17, page 12, id.)

The number of animals slaughtered in 1919, including cattle, calves, sheep, lambs, goats, kids, hogs and any other animals: Illinois, 18,866,304; Kansas, 8,007,352; Nebraska, 6,022,259; Missouri, 5,940,944; New York, 4,891,296; Iowa, 4,662,165; Ohio, 4,282,390; Kansas was second. (Table 18, page 13, id.)

The production of meat in wholesale slaughtering and meat-packing establishments and slaughtered on farms and ranges in 1919 (given in pounds): Illinois, 3,493,058,465 pounds; Kansas, 1,483,856,935 pounds; Nebraska, 1,108,783,272 pounds; Missouri, 954,933,881 pounds; Iowa, 827,797,409 pounds; New York, 774,264,466 pounds; Ohio, 642,751,190 pounds. Kansas was second. (Table 20, page 15, id.)

The number of meat-packing and slaughtering establishments in Kansas in 1919 was given as twenty-eight. Many of the other states had a larger number of such establishments. (Table 24, page 17, id.)

The wages paid employees in meat-packing and slaughtering establishments in 1919 were given in dollars: Illinois, $79,983,000; Kansas, $20,863,000; Nebraska, $13,914,000; Missouri, $10,378,000; New York, $8,968,000; Iowa, $8,738,000. Kansas was second. (Table 24, page 17, id.)

APPENDIX B.

Previous Strikes in the Packing Industry.

William L. Chenery, in Survey, vol. 40, page 35 (April 13, 1918), speaking of the first Alschuler award, said:

> "In lieu of the old sense of bitter helplessness there was created a new realization that difficulties had been relieved by the use of a democratic method. The defeats of the past were rolled back. Thirty-two years had passed since the Knights of Labor had wrested the eight-hour day from the unwilling hands of the masters of the stockyards. That illusory triumph which so swiftly was succeeded by the destruction of the union had been regained. All that had been lost in the ill-fated strike of 1904 was being returned. The taboo on unionism which had been enforced during the weary years after the rebellions of 1886 and 1904 had been effectually repealed. For the first time in its long and tumultuous history the packing industry was accepting conditions in which the inherent human dignity of the bulk of its workers would be recognized. It was a great day for Packington."

The Strike of 1886.

The strike of 1886 is described in "History of Labor in the United States," by John R. Commons and associates, vol. 2, pages 418, 419, as follows:

> "More widespread attention than either the Troy or Cohoes lockout was attracted by the lockout of 20,000 Chicago butcher workmen. These men had obtained the eight-hour day without a strike during May. A short time thereafter, upon the initiative of Armour & Company, the employers formed a Packers' Association, and in the beginning of October notified the men of a return to the ten-hour day on October 11. They justified this action on the ground that they could not compete with Cincinnati and Kansas City, which operated on the ten-hour system. On October 8, the men, who were organized in district assemblies 27 and 54, suspended work, and the memorable lockout began. The negotiations were conducted by T. P. Barry,

who had been especially commissioned by the general assembly then in session in Richmond; and M. J. Butler, the master workman of district assembly 54. The Packers' Association, however, rejected all offers of compromise, and, October 18, Barry ordered the men to work on the ten-hour basis. But the dispute in October, which was marked by a complete lack of ill feeling on the part of the men and was one of the most peaceable labor disputes of the year, was in reality a mere prelude to a second disturbance which broke out in the plant of Swift & Company on November 2, and became general throughout the stockyards on November 6. The men demanded a return to the eight-hour day, but the Packers' Association, which was not joined by Swift & Company, who formerly had kept aloof, not only refused to give up the ten-hour day, but declared that they would employ no Knights of Labor in the future. The Knights retaliated by declaring a boycott on the meat of Armour & Company. The behavior of the men was now no longer peaceable, as before, and the employers took extra precautions by prevailing upon the governor to send two regiments of militia in addition to the several hundred Pinkerton detectives employed by the association. To all appearances the men were slowly gaining over the employers, for on November 10 the Packers' Association rescinded its decision not to employ Knights, when suddenly, on November 15, like a thunderbolt out of a clear sky, a telegram arrived from Powderly ordering the men back to work. Powderly had refused to consider the reports from Barry and Carlton, the members of the general executive board who were on the ground, but, as was charged by Barry, was guided instead by the advice of a priest who had appealed to him to call off the strike and thus put an end to the suffering of the men and their families."

The Strike of 1904.

The following are taken from contemporary periodicals at the time of the strike of 1904:

"On Tuesday of last week the employees in the principal packing houses of the country went on strike. As Chicago is the great center of the cattle-killing and packing industry, it is naturally the point of pivotal interest in the conflict. Although the tie-up was not absolute, the strike appears to have been more effective than the employers anticipated. According

to the newspaper estimates, about 50,000 workers quit and about 35,000 more were indirectly thrown out of employment. The strikers in Chicago numbered 30,000, and in Kansas City, the point second in importance as a packing center, about 10,000. Omaha, East St. Louis and St. Joseph followed with about 5,000 each, and smaller centers with a less number. The purpose of the strike was to prevent a reduction in wages, and to secure to common laborers the same right to a trade agreement as is conceded to the skilled workers. The question of the open or closed shop was not involved. Although the closed shop is neither demanded nor conceded, practically all of the skilled workers and the great majority of the unskilled workers in the packing houses are members of the union."

. . . . . .

"Heretofore the rates of pay have varied in the different cities and the agreements have expired at different times. Michael Donnelly, international president of the Amalgamated Meat Cutters and Butcher Workmen of North America, has sought to have one agreement for all the packing centers, providing a uniform rate of wages for the same class of work in all places. The strike was made general partly for that reason, partly because it would not be effective unless it was general, since virtually the same concerns control the principal packing houses of the country."

. . . . . .

"The tie-up served to demonstrate the dependence of the country upon the few great packing houses, just as the hard-coal strike called attention to the importance of that industry to the everyday life of the people. Before the strike was a day old the price of meat began to rise appreciably in points far removed from the packing centers, and its continuance for a month would mean great hardship, notwithstanding the fact that there is supposed to be in cold storage a supply of meat sufficient to last a month or six weeks."

. . . . . .

"If the public is wise, it will lessen its demand for meats for a while, and live on fish, fruits and cereals—a perfectly practicable and perhaps a really advantageous change, at least for the summer months." (*The Outlook*, vol. 77, pages 671, 672, July 23, 1904.)

Referring to the same strike and attempts at settlement, an editorial in *The Outlook* of July 30, 1904 (vol. 77, page 726), states:

> "Saturday forenoon the negotiations were broken off with the refusal of the packers to accept the ultimatum of the men that all strikers, both skilled and unskilled, be reinstated within ten days, and that all the skilled hog and cattle butchers be taken back inside of forty-eight hours. On Sunday the joint council of the teamsters declined to order their men out, and appointed a committee to visit the packers and try to bring about a settlement. Hundreds of the other employees, however, spontaneously left their work during the negotiation, and finally the 'allied trades' decreed a general sympathetic strike. This controversy demonstrates anew that the proper time to arbitrate labor disputes is before the strike occurs. At no time after the representatives of the strikers and the packers came together was there difficulty of reaching an agreement to settle the controversy by arbitration, except upon issues raised by the strike itself. Both sides were willing to arbitrate all questions relating to wages and working conditions; that is, all questions in controversy before the men actually quit work. But the company would not agree to discharge the men it had hired during the strike or to take back all who had quit. It was over this disputed point, raised by the strike itself, that agreement upon a plan of settlement by arbitration was so long delayed, and it was over this point that the agreement made went to pieces as soon as the strikers started to resume work."

Referring to the same strike, an editorial in *The Outlook* on the 6th of August, 1904, states:

> "In its early stages the contest, especially in Chicago, had been comparatively free from manifestations of violence, but toward the end of the week there was some rioting and violence in Chicago, Omaha and Kansas City. The arrest of Mr. Golden, president of the Teamsters' Union, on the charge of interfering with a union driver by ordering him not to take goods to the packers, caused strong feeling among the strikers and made the conflict more bitter." (Vol. 77, page 773.)

Referring to the same strike, the following quotations are taken from the *Literary Digest* published at that time:

"The labor difficulties which have arisen between the so-called 'beef trust' and its employees, and which led last week to a strike of 72,000 butchers and cutters in the leading packing centers of the United States, are regarded with considerable apprehension by the papers. Fears of a meat famine are freely entertained, and the price of beef has already mounted several cents. The Brooklyn *Eagle*, recalling the sufferings occasioned by the anthracite coal strike of two years ago, indicates the dangers of the present situation thus:

"'A shortage of meat would create widespread public distress much more quickly than a shortage of coal did, because the supplies carried in stock are so much smaller. If the distress should become acute, the outcry for government 'to do something" would be almost inevitable. That outcry brought relief in the coal strike, and people will raise it again, just as the child to whom candy has been given to stop his crying cries again when he wants more candy. The demand will be intensified in this case because "the meat trust" is already extremely unpopular. This combination has been prosecuted by the federal courts, and its members are now under a court injunction to prevent their combination to raise prices. That being the case, it would be strange if the leaders of the butchers' strike did not think they had a much easier campaign before them than John Mitchell and his associates had. We shall have to wait developments for the outcome. It will depend not so much upon the butchers or their employers as upon Theodore Roosevelt.

"'If he follows his own precedent in the coal case and helps the unions to win their fight, he will plainly hope to gain many thousand union votes. If he should gain those votes in that way and should be reëlected, the prospect of four years of a President under such obligations might well rouse alarm among men who believe in government by law rather than by presidential ukase. But such speculation is now in the future. What is before the country to-day is that the butchers have gone promptly and confidently into a strike to cut off the supply of meat. The Pennsylvania precedent makes it almost certain that that situation will soon be before President Roosevelt. It is an embarrassing situation, and the President may well pray to be delivered from it. But after making himself easily the servant of one great union he would be a far less astute politician than he is if he imagined that the other unions were going to spare him when they needed help. The develop-

ments of the next three weeks in the butchers' strike will be awaited with the keenest interest. A government and an administration of law are better than a presidential subordination of law and government to the demands of unions with a record of arson, maimings, and murder.'

"The strike chiefly affects the packing houses of Chicago and other leading packing centers, such as St. Joseph, Mo., Kansas City, East Omaha, Neb., St. Louis, Sioux City, and St. Paul. In New York 3,000 men left work out of sympathy for the strikers. The difficulties were occasioned by a reduction of the wages of unskilled laborers from 18½ to 17½ cents an hour. Only a small percentage of the employees were affected, the wages of the skilled workers not being disturbed. The latter, however, became implicated in the dispute, and a general strike was called. The men accepted a plan of arbitration proposed by the employers, involving a cut in wages, and agreed to leave everything to impartial arbitration. A deadlock occurred, however, over the reinstatement of the strikers. President Donnelly, of the Amalgamated Meat Cutters and Butcher Workmen, insisted that the packers reinstate all the strikers within seven days after the strike was called off. This demand was refused. The employers thereupon suggested that they keep the men then in their employ and reinstate all who went out as soon as possible, giving preference in the order in which the old men filed applications; but the strikers would not agree to this. Now a general strike, including the engineers and machinists, seems certain, and violence is beginning to break out in the strike centers.

"Meantime the price of meat continues to climb. Three days after the strike began the prices of beef jumped up two, three and four cents, and if the strike continues any great length of time the prices are likely to remain at a figure which will put beef out of the reach of the consumer of limited means. The packers think they can avert a meat famine, and are employing nonunion men in the effort to keep up the supply. A large stock of cut meats and hams is still on hand.

"'If the wage war is prolonged," says the New York *World*, 'the public will have the privilege of investing several million dollars in the ultimate decision as to whether the unskilled laborers in the packing houses shall receive 17½ or 18½ cents an hour.' And the Chicago *Evening Post* remarks:

"'Powerful as the packers are, they have assumed no ag-

gressive position. They have tried negotiation and conciliation, and that having failed, they suggest impartial arbitration of the whole matter. This indicates complete confidence and consciousness of the fairness of their position. Can the same be said of the strikers?

"'They allege that the integrity of their union is involved. How? The skilled men must "stand by" the unskilled laborers or lose their support and allegiance; but must they stand by men who put forth extravagant and ill-timed demands? Is this the part of common sense, of prudence, of self-interest? The rejection of the offer of arbitration *ipso facto* puts the strikers in the wrong. At one time the unionists clamored for arbitration and complained of the arrogance of the employers who had no faith in that method. To-day too many of them accept arbitration only when they are certain of obtaining a favorable award. When their case is doubtful or wholly lacking in merit, they scorn arbitration. This is not the way to promote industrial peace.'" (*The Literary Digest*, vol. 29, pages 98, 99, July 23, 1904.)

"Strikes in Chicago have so often been characterized by violence that many papers have been freely expressing the fear that the stockyards strike would be accompanied by scenes of riot and bloodshed; but while the strike 'has already produced a number of cases of regrettable violence,' as the Chicago *Record-Herald* says, 'it cannot be said that the strikers as a body have as yet shown any inclination to resort to organized violence as an aid to victory; the leaders recognize the advantage of peaceful methods, and their influence still is effective.'

. . . . . .

"Mr. Poole then goes on to describe some of the efforts of the labor leaders to prevent violence, as follows:

. . . . . .

"'The leaders have asked the squads of police who are constantly patrolling the streets to send instant word to union headquarters when a street fight breaks out. I saw one begin. Two men rushed out of a saloon pounding each other. Both were strikers, but the crowd of a thousand men and women were mostly Polish, could not understand English, and so thought that one of the fighters was a scab. In a moment the street was a sea of angry faces, stones began to fly at the squad of police. The police drew their revolvers and fired. One man fell, shot in the shoulder. Then suddenly down the street came six union leaders marching abreast. In a few minutes they had quieted the crowd. The trouble was over.'

"The Chicago *Evening Post*, however, thinks that 'the strikers and their leaders have been and are more eager for war than for

peace,' and the Chicago *Tribune* condemns severely the acts of violence that have taken place. Says the latter journal:

"'There has been much less violence at the stockyards than was anticipated when the strike began. That is gratifying. But there have been some outrageous instances of lawbreaking which cannot be overlooked.

"'Night before last a large mob of strike sympathizers attacked and bruised two men who had delivered a load of bread at the Armour plant. They cut the traces of the horses, turned them loose, and set the wagon on fire. They were guilty of crimes against persons and property. The men who were beaten and stoned were on a lawful errand. Those who assaulted them displayed their ignorance of or contempt for law. It is a pity that some one of the officers of the Butchers' Union was not there to order the strikers or their friends to desist and not weaken their cause by criminal acts.

"'Worse even than that was the attack made yesterday afternoon on a woman who got into an argument with some strikers. She said that her husband ought to go back to work so that he could support her decently. Free speech on the part of men or women is not tolerated at Ashland avenue and Forty-third street. There were a few men present who had manhood enough to attempt to defend the woman, but they could not save her from receiving severe injuries, and they themselves were beaten.

"'Last week the head of the union of women workers at the yards came near being beaten because she was supposed to be a nonunionist looking for work. Now comes this infamous assault on a striker's wife because she insisted that it was the duty of her husband to support her. Is the slugging of women one of the methods to be used to win the strike? If so, can workmen who belong to other unions feel sympathy for the strikers and quit work to aid them?

"'If there are not enough police at the stockyards to prevent the wanton destruction of property and the beating of women, send more policemen there. Law and order must be maintained at whatever cost. The women-beating brutes should not be allowed to escape arrest as they have done hitherto.

"'The city will be disgraced if this latest and most dastardly feature of a strike war is not stamped out at once.'" (*The Literary Digest*, vol. 29, pages 158, 159, August 6, 1904.)

In the same magazine this strike, together with the coal strike, is referred to in connection with the political situation, with special reference to President Roosevelt's failure to settle the strike as he had done the anthracite coal strike, and the effect of his failure to intervene upon his chances for reëlection in November of that year. (*The Literary Digest*, vol. 29, page 187, August 13, 1904.)

APPENDIX C.

Industrial Court's Schedule of Wages, Attached to Order of May 2, 1921.

HOG-KILLING GANG.

Driver		$0.42½	per hour.
Shackler		.47½	"
Sticker		.60	"
Drop hogs		.43	"
Tub men		.45	"
Second scalder		.47½	"
Scalder		.60	"
Hook on machine		.47½	"
Trip between		.45	"
Cut strings		.50	"
Shave head		.47½	"
Shave hams		.50	"
Shave sides and backs		.47½	"
Shave sholders (two men)	$0.50 to	.72½	"
Shave necks		.47½	"
Steam heads and shoulders		.42½	"
Steam flanks		.42½	"
Singe heads		.42½	"
Singe hams		.42½	"
Header		.57½	"
Break aitch and drop bungs (comb)		.67½	"
Snatch guts		.60	"
Splitter		.72½	"
Cut out bruises	$0.50 to	.72½	"
Face hams		.52½	"
Pull lard		.47½	"
Retaining room		.60	"

HOG-CUTTING GANG.

Stamp		$0.42½	per hour.
Stamp		.42½	"
Cut down		.40	"
Block hogs	$0.40 to	.45	"
Chopper		.55	"
Bone shoulders	$0.50 to	.60	"
Trim, saw shoulders		.57½	"
Trim jowls		.42½	"
Pull butts		.47½	"
Trim plates		.42½	"

Pass sides	$0.42½	per hour.
Loin pullers	$0.50 to .55	"
Ribber and split sides	.55	"
Trim bqt. and cap bellies	$0.52½ to .55	"
Saw hams	.47½	"
Cut off hams	.47½	"
Trim picnics	.55	"
Ham trimming	.60	"

DRY SALT AND SWEET PICKLE.

Pilers	$0.44	per hour.
Pumpers	.45	"
Overhaulers	.44	"
Truckers	.44	"
Pullers	.44	"
Chute men	.44	"
Inspectors	.44	"
Fast elevator	.45	"

MECHANICAL DEPARTMENT.

Machinists	$0.70	per hour.
Machinist helper	.45	"
Steam fitter	.62½	"
Tinner	.55	"
Millwright, hog machine	.47½	"
Oiler, belts and hog machine	.55	"
Carpenters	.60	"
Electric work	.65	"
Electric helpers	.45	"
Blacksmiths	.60	"
Blacksmith's helper	.45	"
Mason work	.50	"
Ice pullers	.42½	"
Oilers	.47½	"
Engineer	.60	"
Boiler washer	.50	"
Fireman	.55	"
Painter	.65	"

HOG CASING AND OFFAL.

Pull hog bungs and wash	$0.47½	per hour.
Blow hog bungs, grade, turn and insp	.50	"
Trim bungs	.50	"
Pull small guts and tie	.50	"
Pull black guts	.45	"
Pull ruffle fats, wash hearts and livers	.47½	"
Stripper	.45	"
Pack casings in salt	.47½	"
Trim paunches, wash and rip stomachs	.45	"

Trim plucks	$0.47½	per hour.
Trim stomachs and melts	.45	"
Trim giblet meat	.47½	"
Pepsin trimmer	.47½	"

HOG-HEAD DEPARTMENT.

Temple and skin heads	$0.52½	per hour.
Chiseling and break jaws	.47½	"
Checking	.52½	"
Snouter	.50	"
Tonguer	.50	"
Reshaver	.47½	"

CATTLE-KILLING DEPARTMENT.

Pen, knock, shackle and hang off and return shackle	$0.45	per hour.
Sticker, tongue and head and extra gutter	.55	"
Drop cattle and pritch up, skin feet, rip open and break legs	.72½	"
Floorman	.75	"
Pull caul, saw breast, aitchbone hoist, raise gullets	.55	"
Cut fells and drop hide	.57½	"
Rumper and backer, trim bruises	.72½	"
Splitter and gut cattle	.75	"
Saw tails, split chucks	.55	"
Scribe, switch cattle	.47½	"
Pin up neck, push in cooler	.42½	"

BEEF CASING AND ROUGH TALLOW.

Trim paunch, liver, hearts, etc	$0.45	per hour.
Wash tripe	.47½	"
Scald tripe and finish tripe	.45	"
Trim gullets, bladder pizzle	.47½	"
Trim all heads	.47½	"
Run guts, pull ruffle, cut out bungs	.50	"
Strip rounds and turn rounds	.45	"
Bung gut fatter and fat middles	.55	"
Trim middles and bungs and slimes	.47½	"
Measure and salt bungs and middles	.47½	"
Finish tripe	.47½	"
Trimming all fat	.47½	"

SMOKEHOUSE.

Inspector	$0.45	per hour.
Stringer	.42½	"
Tieing	.42½	"
Girls, minimum	.35	"

BEEF COOLER.

Calf skinner	$4 per day or	$0.47½ per hour.
Beef cuts	4 per day or	.47½ "
Suckers	4 per day or	.47½ "

GENERAL.

Truck drivers	$4.00	per day.

FRESH PORK DEPARTMENT.

Loin wrappers	$0.40	per hour.
Pack and scale loins	.42½	"
Pack fresh meat	.42½	"
Scale fresh meat ..... $25 per week or	.45	"

CITY SALES AND SHIPPING.

Scaler	$25.00	per week.
Packers	.45	per hour.

MISCELLANEOUS.

Common labor for men	$0.40	per hour.

Common labor for boys, according to class of work.

CASING CELLAR.

Girls, minimum	$0.35	per hour.

LARD DEPARTMENT.

Running rolls and filling packages	$0.50	per hour.
Helper	.42½	"
Helper	.42½	"

TANK HOUSE.

Tank filler	$0.45	per hour.
Press man	.42½	"
Press man	.42½	"
Bone sawer	.42½	"
Helper	.42½	"
Laborers	.40	"

COOPERAGE.

Cooper	$27.50	per week.

STOREROOM.

Girls, minimum	$0.35	per hour.

SAUSAGE DEPARTMENT.

Mixer man	$0.42½	per hour.
Chopper and feeding grinder	.42½	"
Baker and smoker	.47½	"
Helper baker and smoker	.42½	"
Table girls, minimum	.35	"
Cook hams	.42½	"

TRIMMING DEPARTMENT.

Cleaning pig feet	$0.60	per cwt.
Belly trimming, lean	.70	"
Belly trimming, extra lean	.75	"
Shoulder trimming, lean	.60	"

Shoulder trimming, extra lean	$0.75	per cwt.
Ham trimming, lean	.65	"
Ham trimming, extra lean	.75	"
Neck bones, lean	.85	"
Pig-tail trimming, lean	1.50	"
Beef boning, bulls	1.15	
Beef boning, cows	.95	

PRODUCE DEPARTMENT.

Egg candler	$0.35	per hour.
Man in charge of cooler	25.00	per week.
Laborers	.40	per hour.

BOILER ROOM.

Head fireman	$0.55	per hour.
Two firemen	.50	"
Coal rustlers	.42½	"

ELEVATORS.

Tank room and killing room	$0.42½	per hour.
All others	.40	"

APPENDIX D.

Authority for Awards of Judge Alschuler.

AWARD MARCH, 1918.—Published in full in *Survey*, April 13, 1918, vol. 40, page 36.

AWARD FEBRUARY 15, 1919.—Pamphlet: "United States Administration for Adjustment of Labor Questions Arising in Certain Packing-house Industries. Arbitration of demands of the employees filed with the Administrator November 12, 1918. Findings and Award February 15, 1919."

AWARD DECEMBER 1, 1919.—Pamphlet: "United States Administration for Adjustment of Labor Differences Arising in Certain Packing-house Industries. Arbitration of two general demands of employees, respectively presented in July and September, 1919. Findings and award December 1, 1919."

AWARD JANUARY 20, 1920.—Pamphlet: "United States Administration for Adjustment of Labor Differences Arising in Certain Packing-house Industries. Arbitration of questions arising under new construction work award of November 1, 1918. Findings and award January 20, 1920."

AWARD FEBRUARY 5, 1920.—Pamphlet: "United States Administration for Adjustment of Labor Differences Arising in Certain Packing-house Industries. Findings and award as to application of sections 8, 2-*a* and 2-*g* of the award of December 1, 1919. Findings and award February 5, 1920."

AWARD APRIL 26, 1920.—Pamphlet: "United States Administration for Adjustment of Labor Differences Arising in Certain Packing-house Industries. Demand for three cents per hour raise in wages for certain packing-house employees, and to incorporate into all wage rates the so-called 'bonus' payments. Hearing concluded April 8, 1920. Findings and award April 26, 1920."

AWARD DECEMBER 7, 1920.—Pamphlet: "United States Administration for Adjustment of Labor Differences Arising in Certain Packing-house Industries. Arbitration of general demands for wage increases. Presented to the administrator in June and August, 1920. Findings and award December 7, 1920."

AWARD JULY 14, 1921.—Pamphlet: "United States Administration for Adjustment of Labor Differences Arising in Certain Packing-house Industries. Demand of employers for further general wage reduction of five cents per hour, and for certain changes in application of basic eight-hour day. Findings and award July 14, 1921."

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No. 29,239.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 739.

THE CHAS. WOLFF PACKING COMPANY, PLAINTIFF IN ERROR,

vs.

COURT OF INDUSTRIAL RELATIONS OF THE STATE OF KANSAS, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

SUPPLEMENTAL BRIEF ON BEHALF OF DEFENDANT IN ERROR.

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The plaintiff in error has filed a reply brief in this cause. Inasmuch as the defendant in error has had no opportunity to present an analysis of several important decisions rendered by this court since the printing of its brief, it has prepared this supplemental brief.

Significant Omissions in Packing Company's Reply Brief.

The reply brief of the Chas. Wolff Packing Company makes conspicuous by absence of comment or mention thereon the following propositions:

1. That its business was and is affected with a public interest.

2. That the facts of general knowledge set forth in defendant-in-error's brief with reference to the unrest and emergency existing in the packing industry are true (Defendant-in-error's brief, pages 7-16).

No denial is made of the existence of the facts with relation to the emergency and public interest as related in our brief. The packing company merely complains that not all of these facts were introduced in evidence, and that it was necessary to introduce them, before the Industrial Court could acquire jurisdiction. In other words, while admitting that this court and any other court could take judicial notice of facts of general knowledge, yet the packing company contends that the Industrial Court could not take such judicial notice, but must have presented to it in the way of oral or written testimony all surrounding circumstances known to the public generally. It also contends that this court in passing on the question as to whether an order of the Industrial Court is clearly unreasonable and arbitrary cannot take judicial notice of those facts that were and are of general knowledge and which are set out in our brief.

We invite this court's attention to section 12 of the act in controversy (plaintiff-in-error's brief, p. 76), which pro-

vides that the Supreme Court of Kansas, in passing upon the order of the Industrial Court, may consider the evidence produced before the Industrial Court, and may also admit such additional evidence as it may deem proper, to be taken either in open court or by a commissioner. In this case the Supreme Court of Kansas, in determining whether the order in question should be put into effect, considered both the evidence produced before the Industrial Court and additional evidence taken before a commissioner appointed by the Supreme Court. All of this evidence is set out in the record. There is no question, and it is practically admitted, that there was evidence before the Supreme Court of Kansas that an emergency existed (R., 49; our brief, pp. 20-21, 49). The packing company, however, claims that this evidence, although it was introduced before the Supreme Court of Kansas, cannot be considered, because all of it was not formally offered before the Industrial Court. In our brief we discussed at length the facts which establish the existence of a public interest in the packing company's business and the emergency. These are not refuted. This court should accept the legislative declaration that the business in which the packing company is engaged is affected with a public interest, which is sustained by the Industrial Court, and which is substantiated by a specific finding of the Commissioner and independently approved by the Supreme Court of Kansas (R., 13, 119, 120, 129, 146).

The packing company contends that while this court has taken judicial notice of the facts and circumstances within common knowledge in passing on the validity of the Adamson Act, that the jurisdiction of an administrative tribunal may not be sustained upon facts and circumstances not es-

tablished at a hearing had before it. The commissioner, however, found that the Industrial Court acted upon its knowledge of general industrial conditions, and was justified in so acting (R., 139). In support of its contention the packing company cites the case of Wichita Railroad and Light Company *v.* Public Utilities Commission, 43 Sup. Ct. Rep., 51. That case, however, was one in which the order was held invalid because a finding was not made which was required by statute. There was no question in that case of the right to take judicial notice of facts of general knowledge, nor was there any question of whether or not there was sufficient evidence before the commission to justify the necessary finding. The order was condemned because the finding was not actually made as required by statute.

In United States *v.* B. & O. Railroad Co., 226 U. S., 14, and Oregon Railway Company *v.* Fairchild, 224 U. S., 510, and Interstate Commerce Commission *v.* L. & N. Railroad Company, 227 U. S., 89, the question was not whether or not a commission could take judicial notice of matters of general knowledge, but whether the commission could act upon information received by it outside of the hearing, which information related to matters not of general knowledge. There is no evidence in the record that the Industrial Court acted upon any information which it received *ex parte*, other than the information which it had in common with every other citizen in the land, and of which this court very rightfully takes judicial notice.

Judicial notice is taken of matters of general knowledge (Mueller *v.* Oregon, 208 U. S., 412), industrial, social, political, and economic conditions and changes and the general methods and course of business (7 Enc. Evid., 931,

934, 935, 938, 962), general facts relating to travel and transportation (*id.*, 933, 941), public acts, books, journals and records of legislative departments and the messages of the executive (*id.*, 960, 983, 984, 993), the object and conditions intended to be remedied by legislation, including any general condition which might aid in construction (*id.*, 961), the history of the country and the law, and the public necessities which caused the legislative enactment, as well as the public discussion relative to its passage and the reasons given therefor (*id.*, 962). So this court, recognizing these principles, has expressly said that its justices have power to refresh their memories and inform their consciences from such sources as they deem most trustworthy (Jones *v.* U. S., 137 U. S., 202) and for such purposes, to resort to such information as they may deem proper (Brown *v.* Piper, 91 U. S., 37), taking judicial notice of common experience and knowledge (Brown *v.* Piper, 91 U. S., 37; Phillips *v.* Detroit, 111 U. S., 604), legislative journals (South Ottawa *v.* Perkins, 94 U. S., 260; Railroad Tax Case, 8 Sawyer, 293, 13 Fed., 722, 767), public documents of the State before its annexation, and other historical facts in reference to boundaries in dispute between it and another State (Coffee *v.* Grover, 123 U. S., 1), the archives (Underhill *v.* Hernandez, 168 U. S., 250), rules and regulations (Caha *v.* U. S., 152; U. S., 211, 221, 222), and records (The Habana, 175 U. S., 677, 696) of a department, as well as official statements of the head thereof (Heath *v.* Wallace, 138 U. S., 573), and proclamations and messages of the President (U. S. *v.* The Three Friends, 166 U. S., 1, 64, 65; Jenkins *v.* Collard, 145 U. S., 546; Jones *v.* U. S., 137 U. S., 202, 212, 215; Armstrong *v.* U. S., 13 Wall.,

154). This court has also taken judicial notice that the public health is deeply concerned with the reclamation of swamp lands (Leovy *v.* U. S., 177 U. S., 621), and that fuel is a necessity of life (Jones *v.* City of Portland, 245 U. S., 217).

In Appendix F to this brief will be found facts with relation to the packing industry, and controversies therein of which judicial notice will be taken under the above authorities.

No complaint has been made by the packing company of the manner in which evidence was introduced before the Industrial Court or the Commissioner. No assignment of error is predicated upon the action of the Supreme Court or the Industrial Court in this respect. In fact, the packing company in its answer to the complaint filed in the Industrial Court in effect conceded the jurisdiction of the court (R., 11). It is to be noted that the specifications of error set forth in the packing company's brief (page 15) do not accord with the assignments of error filed in this cause at the time the writ of error was sued out from this court (R., 262). The latter are of such a general nature as not to raise the question of jurisdiction of the Industrial Court on the ground that there were not sufficient facts before the Industrial Court to show public interest or an emergency. This court, however, should look at the evidence as presented to the Supreme Court of Kansas, as it is that decision which is here for review. We contend that there was sufficient evidence before the Supreme Court of Kansas, coupled with its right to take judicial notice of matters of general knowledge, to sustain its judgment that the order in controversy is reasonable and proper.

The packing company, by its return, admitted the allegations of paragraph two of the alternative writ (the petition treated as an alternative writ of mandamus, R., 23) issued by the Supreme Court. One of those allegations is as follows:

> "That respondent's (the packing company's) business is the only establishment of its kind in adjacent territory, and creates a large and growing market for live stock, to the great benefit of the community and to the great benefit of persons engaged in the business of live stock, and to the great benefit of persons generally engaged in agriculture" (R., 1, 25).

By the ninth paragraph of its return, the packing company admitted in substance that at the time of the issuance of the temporary order of March 21st, there was impending throughout the United States a general strike of packing house employees which would have included the Wolff Packing Company's employees, and that the United States took cognizance of the impending general strike, and at the direction of the President, the Secretaries of Labor and Commerce secured a temporary adjustment of such controversy by agreement of the parties until September 1st, 1921 (R., 2, 25).

The record before the Industrial Court shows:

The strike of 1918 in the Wolff Packing Company plant (R., 186).

The dissatisfaction in the same plant in 1920 (R., 187, 211).

Wolff Packing Company's employees belonged to same union as workers in Big Five (R., 188, 189).

The district president of this union, who had jurisdiction

over six States, told opposing counsel at that hearing that the union would go down to complete defeat before it would sacrifice one minute of the eight-hour day (R., 189-190).

The local union entered into contracts with its employers as to working conditions, but could not strike after a strike vote was taken without the authorization of the International Executive Board (R., 189, 190).

The proposed new agreement was presented in January, 1921, and the demand of the employees that it be accepted by the company was met by refusal to discuss the matter and the posting of notice on January 14, effective January 17, reducing wages and taking away the eight-hour day (R., 184, 185, 186, 187).

The wages in the contract of May 10, 1920, were 10 to 15 cents per hour less than those paid in other packing centers in America (R., 189), but were to follow any changes made by future Alschuler awards (R., 7, 249).

The plant in question supplied three State penal and charitable institutions (R., 196).

Several meetings were held by the employees before instructions were given to prosecute the complaint in question before the Industrial Court (R., 194). Two hundred and twenty employees, both union and non-union, unanimously directed the institution of the complaint (R., 194). A list of 180 employees was furnished to the Industrial Court as among those who authorized the filing of the complaint (R., 196).

While the hearing was on, the notice posted by Swift and Company reducing wages generally and *abolishing the eight-hour day* was called to the attention of the court (R., 207). Opposing counsel appearing before the Industrial Court,

asked an admission that the Big Five had posted a bulletin reducing wages and abrogating *the eight-hour day* (R., 199). From this notice much dissatisfaction arose, and a strike was impending in different parts of the State (R., 199-200); for the district president, knowing the temper of his followers, had determined that the union should go down in defeat rather than sacrifice one minute of that *eight-hour day* (R., 190).

The Wolff Packing Company's answer before the Industrial Court admitted that a substantial controversy existed with its employees (Par. 6, R., 9).

Every threatened strike in the designated industries constitutes an "emergency," which authorized action by the Industrial Court. The preparation of meat for food is one of the designated industries.

A threat to strike in the Wolff Packing Company's plant imperiled the continuity of the production of food in Kansas. This would disturb the public peace. It would lessen the meat supply of the State, and, as the packing company alleges in its answer, it would destroy a free, open market for hogs and cattle. How much it would lessen the meat supply, how much it would affect the market for live stock, surely this court will not consider. It will certainly not determine the extent to which the peace of the State might be disturbed.

The emergency necessary to justify the exercise of the police power to protect the public peace and promote the public welfare need not affect a large number of people. The emergency in the Adamson law affected the whole country. The coal strike last year also affected a large number. The coal strike in Kansas in 1919-1920 affected part of the State,

while the Wolff Packing Company threatened strike affected a smaller number. By preventing it, the Industrial Court preserved the peace of an extensive community at and near Topeka. It also preserved the market for farmers and stock raisers who shipped their stock for slaughter to this company. The packing company was the only establishment of its kind in adjacent territory. It promoted the public welfare of such citizens of Kansas by furnishing them a "free, open" market for their live stock, which they would have lost if the plant had been shut down. The supply of meat in Kansas would have been lessened if the strike had not been averted. It prevented the starting of a conflagration which would have swept the State.

There surely was an emergency when a strike was imminent among the Big Five Packers which the President and three Secretaries in his cabinet composed by inducing both sides to accept a compromise. About the same time the Industrial Court made its temporary order in this case which was, on May 2, 1921, merged into the final order. If it was an emergency that caused the President and his cabinet to act, was it not also an emergency that caused the Industrial Court to act? The size of the company and plant does not determine whether it is affected with a public interest. If a small elevator in a little town (*Brass vs. North Dakota*, 158 U. S., 391) may be affected with a public interest equally with the large elevator in a city (*Munn vs. Illinois*), then why may not the packing company that buys its own hogs and cattle from the farmer and stock raisers be affected with a public interest equally with the stock-yards of the Big Five Packers (*Stafford vs. Wallace*)? This court has said (*Brass vs. North Dakota*) that size and importance in an

industry is a question of policy and not of power. That size of business is unimportant is established by *German Alliance Insurance Company vs. Lewis,* 233 U. S., 389.

It has been said that:

> "The barometer of prosperity is not the steel industry, it is meat consumption which is steadily increasing."

If meat consumption is the barometer of prosperity, then the packing industry which produces such a large part of the meat consumed is affected with a public interest. It follows that the Wolff Packing Company, one unit of the packing industry, is also so affected.

The Order is Temporary.

In the final opinion of the Supreme Court, it stated that the evidence showed the existence of an emergency (R., 145). The court held that the order of the Industrial Court of May 2, 1921, was *temporary* in effect. This appears in subdivision three of the syllabus in the following language:

> "3. Under proper circumstances, the Court of Industrial Relations can make an order *temporary* in effect slightly raising the wages of employees in a packing house plant and fixing the hours of labor, although the plant at the time the order is made is being operated at a loss."

Under the statutes of Kansas, the syllabus constitutes the law of the case (General Statutes of Kansas, 1915, section 7497).

Recent Cases.

Since the printing of our brief in this case this court has decided the case of Minimum Wage Board of the District of Columbia *v.* The Children's Hospital of the District of Columbia (April 9, 1923). There no question of public interest or emergency was involved, but this court recognized that where public interest or an emergency was involved freedom of contract must yield to the exercise of the legislative will. This court there said (p. 6):

> "There is, of course, no such thing as absolute freedom of contract It is subject to a great variety of restraints. * * * It will be helpful to this end to review some of the decisions where the interference has been upheld and consider the grounds upon which they rest:
>
> (1) *Those dealing with statutes fixing rates and charges to be exacted by business impressed with a public interest.* There are many cases, but it is sufficient to cite Munn *v.* Illinois, 94 U. S. 113. The power here rests upon the ground that where property is devoted to a public use the owner thereby, in effect, grants to the public an interest in the use which may be controlled by the public for the common good to the extent of the interest thus created. It is upon this theory that these statutes have been upheld and, it may be noted in passing, so upheld even in respect of their incidental and injurious or destructive effect upon pre-existing contracts. See Louisville & Nashville Railway Co. *v.* Mottley, 219 U. S., 467. *In the case at bar the statute does not depend upon the existence of a public interest in any business to be affected, and this class of cases may be laid aside as inapplicable.*" (Italics ours.)

Of the law held invalid in that case it was said (p. 13):

> "It is not a law dealing with any business charged with a public interest or with public work, or to meet and tide over a temporary emergency."

A comparison between the Kansas Act, the Adamson Act, and the District of Columbia Act is set forth in Appendix E to this brief. A summary of the comparison is as follows:

Adamson Act.	*Kansas Industrial Court Act.*	*District of Columbia Minimum Wage Act.*
Applies to industry affected with public interest.	Applies only to industries affected with public interest.	Applies to all industries.
Passed to meet an emergency.	Passed to meet an emergency. Operative only in emergencies.	Operative regardless of emergency.
Temporary in nature.	Orders of Industrial Court temporary in nature.	Permanent in nature.
Does not deprive parties of right to agree.	Do not deprive parties of right to agree.	Forbids parties to agree.

Subsequent to the opinion in Minimum Wage Board of the District of Columbia *v.* The Children's Hospital of the District of Columbia, this court decided the case of Board of Trade of Chicago *v.* Olsen (April 16, 1923). The act questioned there declared in part:

> "Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'futures' are affected with a national public interest."

Of such declaration this court said:

> "The Board of Trade conducts a business which is affected with a public interest and is, therefore, subject to reasonable regulation in the public interest. The Supreme Court of Illinois has so decided in respect to its publication of market quotations. New York & Chicago Grain Exchange *v.* Chicago Board of Trade, 127 Ill., 153. In view of the actual interstate dealings in cash sales of grain on the exchange, and the effect of the conduct of the sales of futures upon interstate commerce, we find no difficulty under Munn *v.* Illinois, 94 U. S., 113, 133, and Stafford *v.* Wallace, *supra*, in concluding that the Chicago Board of Trade is engaged in a business affected with a public national interest and is subject to national regulation as such."

If stockyards and grain exchanges are affected with a public interest, then certainly the packing industry is so affected and the declaration of the legislature of the State of Kansas to that effect is controlling.

The Commissioner's Findings on Losses.

Reference is made by the packing company to certain findings of the Commissioner with reference to the matter of losses. Under the decision of *State ex rel v. Foley*, 107 Kan., 608-613, where a party excepts to a finding of fact made by a commissioner appointed by the Supreme Court to take evidence, the finding becomes merely advisory and the court considers all the evidence in the case and itself determines the question of fact.

On the point as to the cause of the claimed loss in the operation of the plant, the Industrial Court excepted to the finding of the Commissioner. The Commissioner stated there was no evidence from which a definite deduction could be made of why the business of the respondent had been thus unprofitable for three years (R., 126, Finding No. 13). At the close of this finding the Commissioner said (R., 126):

> "In the absence of any showing in the evidence of mismanagement or other conditions which could and should be corrected accounting for the losses of the company in operation, it is found by the Commissioner that the plant could not operate without loss on the basis of the basic day and increase of wages provided in the order of the Industrial Court."

This statement is in conflict with the finding that there was no evidence from which a definite deduction could be made as to why the business of the respondent had been unprofitable for three years. It was also in conflict with the rule established by the decisions of this court that it is incumbent upon the party alleging a loss from an order of a public commission to show clearly and in detail the material

facts establishing the loss. There was no such evidence in this case. On this point the Supreme Court of Kansas independently found (R., 151):

> "The defendant is operating its plant at a loss. Why, does not appear from the evidence. At least, this court is unable to determine why, and for the purpose of this discussion, it is unnecessary to ascertain why. The plant may be badly located on account of transportation facilities. There may have been managerial mismanagement. A part of the money arising out of the operation of this plant may have been taken by the Allied Packers and used in the operation of the other plants conducted by them. It may have been that the loss was due to unstable conditions in livestock and meat markets prevailing during the time covered by the investigation of the Court of Industrial Relations."

Confiscation.

Another remarkable thing about the packing company's reply brief is its failure to challenge the authorities referred to in our brief (pp. 70-78) to the effect that the exercise of police power is not unconstitutional because it may incidentally cause loss or damage to some individual or corporation. All that plaintiff in error states in this respect is:

> "After a careful consideration of the arguments advanced by the industrial court, the packing company takes leave to say that the questions involved in this writ of error are whether the State of Kansas can fix the wages to be paid by the owners of packing houses to packing-house employees and by increasing the company's payroll cause it to suffer additional loss at a time when its operating expenses and costs

> of raw material exceed its revenue from sales. If this can be done by the Kansas Legislature, the judgment of the Kansas Supreme Court can be affirmed."

It is almost the identical language used by the appellee in Wilson *v.* New, *supra*, in its unsuccessful attack upon the Adamson Act. In Board of Trade of Chicago *v.* Olsen, *supra*, it was alleged in the petition and admitted by the motion to dismiss:

> "That if the Board were required to admit representatives of cooperative associations of producers with the privilege of dividing with their members the proceeds of commissions less expenses, it would greatly impair the value of its memberships to other members."

Of this conceded infliction of loss upon the individuals by the passage of the act, this court said:

> "Congress may, therefore, reasonably limit the rules governing its conduct with a view to preventing abuses and securing freedom from undue discrimination in its operations. The incidental effect which such reasonable rules may have, if any, in lowering the value of memberships does not constitute a taking, but is only a reasonable regulation in the exercise of the police power of the National Government."

With this recent enunciation from this court on the question, it must be held to have been determined that the order here involved is not violative of the Fourteenth Amendment, being a proper exercise of the police power, although the order may incidentally cause additional loss to the packing company.

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Conclusion.

The emergency existed here in three different ways:

1. There was an emergency because there was a strike threatened. This court has decided in Wilson *v.* New that an impending strike constitutes an emergency because it interferes with the peace and public welfare of the community.

2. There was an emergency because the food supply of the State or a part of it was imperiled, by this plant's cessation of operations.

3. There was an emergency because the stock-raisers and farmers of the state would have had their free and open market for their live stock interfered with by this plant ceasing to operate. It was the only plant in adjacent territory.

Each and all of these three things did occur in the instant case, as has been found by the Industrial Court, the Commissioner and the Supreme Court of Kansas. These findings are sustained by the evidence and the admissions of the parties.

The judgment of the court below should be affirmed.

Respectfully submitted,

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APPENDIX E.

Comparison of Kansas Industrial Court Act as Applied in Wolff Case, with Adamson Act, and with District of Columbia Minimum Wage Act.

Public Interest.

Adamson Act (as interpreted by Supreme Court of United States).

"The law is concerned only with those who are engaged in a business charged with a public interest." Wilson *v.* New, 243 U. S., 332, 353.

Kansas Industrial Court Act as applied in Wolff Case (as interpreted by Supreme Court of Kansas).

"The operation of the following named * * * industries is * * * declared to be affected with a public interest * * * (1) The manufacture * * * of food products * * *" Kansas law, sec. 3.

"The legislature has declared that its business is affected with a public interest, and for that

District of Columbia Minimum Wage Act (as interpreted by Supreme Court of United States).

"It applies to any and every occupation in the district, without regard to its nature or the character of the work." Adkins *v.* Children's Hospital, — U. S., —, decided April 9, 1923.

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reason has assumed to exercise control over it. For a recital of the facts justifying that declaration, *The State ex rel. v. Howat*, 109 Kan., 376, is referred to." Opinion of Supreme Court of Kansas, 109 Kans., 639 (R., 40).

Adamson Act.

"The organizations representing the employees of the railroads * * * made a formal demand * * * that * * *

"The employers refused the demand, and the employees took steps to call a general strike * * *

"The President * * * pointing out that * * * to save the commercial disaster, the property injury, and the personal suffering * * * if a strike was not prevented, asked Congress * * *

"Congress responded by enacting the statute whose validity * * * we are called upon to consider." Wilson *v.* New, 243 U. S., 342.

Kansas Industrial Court Act.

"In case of a controversy arising between employers and workers * * * if it shall appear to said court * * * that said controversy may endanger the continuity or efficiency of service of any of said industries * * * or affect the production * * * of the necessaries * * * of life * * * or produce industrial strife, disorder, or waste, or endanger the orderly operation of such industries * * * and thereby endanger the public peace or threaten the public health * * * jurisdiction * * * granted to said court * * * to investigate * * * make * * * temporary findings and orders * * * take evidence, * * * and to settle and ad-

District of Columbia Act.

"It is not a law * * * to meet and tide over a temporary emergency." Atkins *v.* Children's Hospital, *supra.*

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* * * and to settle and adjust all such controversies * * *" (Kansas Law, sec. 7).

The Industrial Court found this to be a case in which findings and order could be made under section 7 (R., 11).

The Commissioner found such an emergency (R., 119).

The Supreme Court found such an emergency (R., 145, 146).

"If the Adamson law was compelled by an emergency, the Kansas Industrial Court law was likewise compelled by an emergency. The purpose of the latter law is to meet such emergencies as will prevent a suspension or interference with the operation of the several kinds of business named in that law." Opinion Supreme Court (109 Kans., 645) (R., 45).

Adamson Act.

"Sec. 3. That pending the report of the commission * * * and for * * * thirty days thereafter, the compensation of railway employees * * * shall not be reduced * * *" Adamson Act, quoted 243 U. S., 344.

The standard of wages was "for such a time as might be deemed by the legislature reasonably adequate to enable normal conditions to come about as the result of agreements between the parties." Wilson v. New, 243 U. S., 351.

"But this was not a permanent fixing (of wages) but, in the nature of things, a tempo-

Kansas Industrial Court Act.

"Section 8 of chapter 29 of the Laws of 1920, the court of industrial relations act, provides that—'If either party to such controversy shall in good faith comply with any order of the court of industrial relations for a period of *sixty days* or more, and shall find said order unjust, unreasonable or impracticable, said party may apply to said court of industrial relations for a modification thereof. * * *'

The order of the court of lations, in its opinion * * * said:

'Any order made by this court after having been put into force and effect for a period of sixty

District of Columbia Act.

"The board is authorized: * * * 'To ascertain and *declare* * * * (A) Standards of minimum wages for women in any occupation * * * and what wages are inadequate.'"

"Moreover, in sustaining the wage feature of the law (Referring to the Adamson Act), emphasis was put upon the fact that it was in this respect temporary 'Leaving the employers and employees free as to the subject of wages to govern their relations by their own agreements after the specified time.' The act was not only temporary in this respect but it was passed

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rary one which left the will of the employers and employees to control at the end of the period, if their dispute had ceased." Wilson *v.* New, 243 U. S., 356.

"We cannot suppose that it was meant to forbid work being done at a less price than the rates laid down, when both parties to the bargain wished to go on as before, and when the circumstances of the road were so exceptional that the lower compensation accepted would not affect the market for labor upon other roads." Ft. Smith & W. R. Co. *v.* Mills, 253 U. S., 206, 209.

days, may be reviewed at the instance of either party. * * * The order made in this case at this time will be made in view of that provision of the law. The business conditions of the day are unusual and unstable, and sixty days or ninety days may bring about such changes as would require a revision of any order made herein.'" Opinion Supreme Court, R., 149.

The order of the court of industrial relations contained the following provision: "This order shall take effect and be in force on the 1st day of May, 1921, and shall continue until changed by the court or changed by agreement of the parties with the approval of the court."

to meet a sudden and great emergency. This feature of the law was sustained principally because the parties, for the time being, could not or would not agree. *Here they are forbidden to agree."* Atkins *v.* Children's Hospital, *supra.*

APPENDIX "F."

(Prepared by the Bureau of Labor Statistics and the Division of Conciliation, United States Department of Labor.)

Controversies in the Packing Industry.

Since 1917 peace has been maintained in the packing house industry under machinery set up by the Government. This agreement was first arranged by the President's Mediation Commission with Judge Samuel Alschuler as administrator. Its object was to adjust all matters in dispute and insure continuous production. In 1919 the agreement was renewed, and was to terminate one year after the declaration of peace. A dispute arose over the question of whether the war actually ended with the signing of the armistice or with the formal declaration of peace by Congress or the President. Finally, on December 13, 1920, at the close of a joint wage hearing Judge Alschuler advised both parties that he could not continue longer as administrator, and urged that the parties at interest work out some plan of adjudication for future disputes in the industry, which would be mutually acceptable and practicable to the great packing houses with their more than 70,000 employees.

On January 14, 1921, the attorneys for the packers, in behalf of their clients, addressed a letter to the Secretary of Labor calling attention of the desire of Judge Alschuler to retire, and asserting that the period for which the packers had signed a renewal had in reality expired, and asking the Secretary of Labor to terminate the agreement. Conferences

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were held on the 11th of February at which the Secretary of Labor, Judge Alschuler, the Director of Conciliation, and former members of the President's Mediation Commission who had written the agreement in the first instance, and the attorneys for both the packers and their employees were present. At this meeting both sides were asked to continue the agreement until May 1, 1921, in the event that the packers would not agree to a longer period. The employees agreed, and the attorneys for the packers stated that they must first confer with their employers. Judge Alschuler intimated that he would remain for a brief period longer, provided certain office and clerical help were provided. On February 21, 1921, Messrs. Condon and Meyer on behalf of their clients notified the Secretary of Labor that the agreement would be considered at an end. The Secretary notified both employees and the Federal arbitrator of the decision of the packers.

Following the withdrawal from the Alschuler administration, a reduction in wages of eight cents per hour for hourly workers and 12½ per cent for piece workers, effective March 14, was announced. Overtime rate of pay was to apply after ten hours work instead of eight, or after fifty-four hours a week; retention of the guarantee of forty hours work a week was announced; the Armour plant announced a new plan for employee representation to be put into immediate effect.

Representatives of the employees wired the President, protesting the alleged violation of agreement on the part of the packers. The President referred the matter to the Secretary of Labor, who issued an invitation to both sides to send representatives to Washington to confer with him in an effort to reach an amicable adjustment. The invitation was

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accepted by both sides and the date set for March 21, 1921. In the meantime the international unions involved held a conference in Omaha, Nebraska, and decided to take a referendum strike vote throughout the packing centers of the United States to be effective should efforts at adjustment fail. This vote was taken and was said to be overwhelmingly in favor of a strike.

Secretary Davis invited Secretaries Hoover and Wallace to co-operate with him in an attempt to reach an adjustment. Some days prior to March 21st, Attorneys Condon and Meyer were heard by the Secretary of Labor. On the morning of March 21st the representatives of the employees were given a private interview with the secretary. At 2 p. m. on March 21st, a joint conference of both sides was called to order by Secretary Davis, the following participating: Secretaries Hoover, Wallace, and Davis, Assistant Secretary E. J. Henning, Director of Conciliation Hugh L. Kerwin, Commissioners of Conciliation Hywel Davies and E. P. Marsh, Attorneys Condon and Meyer, representing the packers; Attorney Redmond S. Brennon and Mr. Dennis A. Lane representing the employees. The time was occupied in hearing statements from both contending parties, with pertinent questions interjected by the cabinet members, and an adjournment was taken at 6 o'clock.

At 8 p. m. an executive session was held in which the Federal officials present at the afternoon session discussed the situation. At nine-thirty that night the attorneys for the packers were sent for and lengthy discussion ensued between them, the cabinet members, and the Assistant Secretary of Labor. The morning of the 22nd the Secretary and Assistant Secretary of Labor called the representatives of the employees

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into conference and the balance of the day was spent in alternate conferences with both sides. Negotiations continued throughout the day of the 23rd and complete agreement was reached that afternoon.

The agreement provided that the reduction in wages effective March 14, 1921, should not be subject to further arbitration; that eight hours should remain the basic workday, with time and one-half paid in excess of eight hours, with the right of either party to appeal to the arbitrator for change; that during the life of this agreement any appeals for changes as to hours or wages must be submitted in written brief unless otherwise requested by the administrator; that this agreement shall absolutely terminate September 15, 1921; that with the exception of modifications noted the Alschuler rulings and administration should remain in force until September 15, 1921. This agreement took the form of a separate letter from the representatives of each side to Secretary Davis.

On March 24th Secretary Davis addressed a telegram to Judge Alschuler requesting him to continue as administrator during the remainder of the agreement period. Judge Alschuler replied by wire the same day, accepting the reassignment.

The Alschuler agreement expired September 15, 1921. On October 21st the union voted to vest the executive board of the union with power to call a strike if it became necessary. On November 9th four of the big five packers requested their employees to consider in the plant councils a reduction in pay.

On November 18th it was announced that the employees, through the plant councils, voted to accept a wage reduction

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of about 10 per cent, which was to become effective on November 28th. On December 1st the executive board of the union announced a strike, effective December 5th, in all plants where wage reduction was put into effect. The union claimed the strike was effective in all plants of the big five. The packers maintained that conditions were nearly normal. On December 8th the Department of Labor tendered its good offices with a view to bringing about an adjustment.

Mr. O'Hern, for the packers, stated they could not agree to a conference with anybody except representatives of their industrial plan. Mr. Lane, for the unions, advised that the men would return to work if the packers would arbitrate or rescind the wage reduction.

On December 13th and 14th the Secretary of Labor conferred with representatives of the packers at Chicago with the object of adjusting matters. On the same day the Department assigned a conciliator to take up the strike situation in New York City. On December 14th a commissioner was assigned to East St. Louis. On December 17th the Ft. Worth situation was taken up, and on this date a commissioner was also assigned to the Denver controversy.

Our information is that on January 23d Mr. C. J. Hays of the union, made public a letter wherein it was set forth that Commissioners Nelson, Rodgers, and Marshman, of the Department of Labor, called at his office under instructions from Mr. Hugh L. Kerwin, Director of Conciliation of the Department, and gave out the information that the Department had put forth every effort to bring about mediation and arbitration without success, and that the striking packing-house workers should not hold out longer with the

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hope of the intervention of any Government agency. He also stated that the Commissioners, from their observation in many centers, suggested that a vote of the strikers be taken regarding the calling off of the strike. Mr. Hays further stated that the Department of Labor would use its best efforts to eliminate any discrimination against former employees. He therefore requested that the butcher workmen and allied mechanical trades gather and assemble in proper halls for the purpose of voting on the calling off of the strike. Secret ballots were to be taken on Thursday, January 26th, and telegraphed to general headquarters of the union.

The Strike of 1921.

Our records show that a brief strike of Chicago packing-house employees occurred in July, 1919, because the men "disliked to have guards around the plants." The following account of this disturbance is from the *New York Evening Post* of July 21, 1919:

> "Chicago, July 21.—*Ten thousand* employees of the five big packers who have been on a strike for several days returned to work this morning after the employers had complied with the demand of the men that all police and special guards be withdrawn from the various plants.
>
> "The men announced that they will demand an increase of 30 per cent in wages through Federal Judge Samuel Alschuler, who is acting as arbitrator between the packers and their employees. The men, it is said, have agreed to abide by the decision of Judge Alschuler. Eighty thousand stock-yard employees are involved in the demand for higher wages."

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Another strike was reported for Chicago on August 8, 1919, following race riots due to the employment of negroes in the yards, and

> "started over a demand of the men that the guards placed about the plants be withdrawn. The men said they had no objection to working with negroes if they were union men, but objected to working with non-union men, and particularly under guards."

Another statement says they refused to work with negroes under police protection.

The exact number of men on strike is not known, but is supposed to have been about 65,000.

The following statement concerning this strike is from the New York *Evening Post* of August 11, 1919:

> "Chicago, August 11.—Striking employees of the packing plants at the stock-yards returned to work today after the last of the police guards had been withdrawn by Chief Garrity, in accordance with an agreement reached last Saturday. There was no report of trouble between the white and negro workmen and every plant was said to be in full operation for the first time in more than a week.
>
> "Officials of the Stock Yards Labor Council declared they would continue their efforts to unionize all the packing-house employees."

An important strike of packing-house employees began about December 5, 1921, because of wage reductions, and included Chicago and all the large packing-house cities. About 50,000 strikers were involved. This strike is considered to have ended about January 28, 1922, after being

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called off by the "Union Executive Council." Accounts differ as to the number of men on strike in Chicago; one union source gave it as 12,000. This strike was characterized by rioting in Chicago and other cities.

Extract from the Tenth Annual Report of the Secretary of Labor, October 1, 1922.

The Packing-house Strike.—On September 15, 1921, the Alschuler agreement, through which peace had been maintained in the packing-house industry since the war period, came to an end. On October 21, the union voted to invest its executive board with power to call a strike if such action became necessary. This action was taken in anticipation of announcements of wage reductions by the packers. Four of the Big Five packers had established plant councils in their establishments, and on November 9, these packers requested their employees, through the plant councils, to accept a reduction in pay. On November 18, it was announced that the employees had accepted a reduction of about 10 per cent, which was to become effective on November 28. On December 1, the executive board of the union announced a strike, effective December 5, in all plants where the reduction was put into effect. On December 8, the Department of Labor tendered its good offices with the view of being helpful in arriving at an adjustment. The union agreed to call off the strike and return to work if the packers would arbitrate or rescind the wage reduction. The latter refused to deal directly with the union, which was in line with the former policy, but agreed to take up all matters of dispute through the plant councils.

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On December 13 and 14, the Secretary of Labor conferred with representatives of the packers at Chicago in an effort to find a basis of settlement. On the same day commissioners of conciliation were assigned at New York City and East St. Louis, and later at Fort Worth, Denver, Oklahoma City, and other points. It was soon found that settlements in the various cities affected were contingent upon an agreement being reached in Chicago.

Unskilled workers in the packing-house industries constitute 65 per cent of the total employees. Their hourly wage, prior to the announced wage reduction, was 45 cents per hour, having been reduced in March, 1921, from 53 cents. The reduction of November 28, made the scale 37½ cents per hour for this class of labor.

The efforts to effect an adjustment were unsuccessful, and after a strike of many weeks it was called off by the union and work was resumed on the companies' terms.

Guarantees of Time Per Week Prior to Alschuler Awards.

Guarantees of time per week existed in the packing industry before the Alschuler awards and prior to 1917. See Bulletin of the United States Bureau of Labor Statistics, No. 252, p. 62.

Hours of Labor.

The following statements and data are taken from Bulletin No. 294, of the United States Bureau of Labor Statistics—United States Department of Labor, entitled "Wages and Hours of Labor in the Slaughtering and Meat Packing Industry, 1921":

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"The present study was made in April, 1921, and was limited as to 34 representative establishments, all of which were included in the 1917 report. The 1921 data cover 32,217 employees. The data used in the compilation of both reports were obtained from the pay rolls of the establishments and through inquiries made by agents of the bureau who visited the establishments (p. 3)."

* * * * * * *

"The slaughtering and meat-packing industry is the largest engaged in the production of food products, and is also one of the largest and most important industries in the United States. It has become an actual necessity, not only to the people in the large cities and industrial centers, but also to those in small cities and villages. To a very great extent the people of the whole country are dependent upon the large meat-packing establishments for cattle, hog, sheep, and calf products (p. 3).

* * * * * * *

"The establishments covered in this report represent every large and important meat packing center in the United States. Data was obtained from representative establishments of Armour & Co., Cudahy Packing Co., Morris & Co., Swift & Co., Wilson & Co., and 10 other companies. The bureau here expresses its appreciation of the co-operation and courtesy extended by all of these companies (p. 5).

* * * * * * *

"*Table 4.—Basic or Regular Hours, Guaranteed Hours of Pay, Proportionate increase of pay for overtime and for work on Sundays or Holidays, and date and amount of Reduction of Wages, by District and Establishment,* 1921" (p. 16).

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(In this table 4 the following numbers of establishments, that is, meat packing plants, are covered in the respective districts: Seven in District 1, ten in District 2, four in District 3, four in District 4, four in District 5, and five in District 6.) This makes a total of thirty-four meat packing plants. As before stated, they are representative plants and have 32,217 employees. In Districts Nos. 1, 2, 3, and 4, the basic or regular hours were eight hours per day and forty-eight hours per week. The guaranteed hours of pay per week were forty, except in plant No. 4, District No. 3, at which plant there was no guarantee. Overtime at time and one-half was paid for work in excess of the basic or regular hours per day. On Sundays and holidays all of the hours were paid for at double the regular rate.

(In District No. 5 the basic day was eight hours excepting on Saturday in plant No. 1 where it was four hours, and excepting in plant No. 3 where it was nine and one-half hours on each week day but Saturday, and on Saturday was five hours; and excepting in plant No. 4, the basic day was ten hours. In District No. 5, the basic hours per week were: In plant No. 1, 44 hours; in plant No. 2, 48 hours; in plant No. 3, 52½ hours; in plant No. 4, 60 hours. There was no guarantee of hours per week in District No. 5, and overtime was paid for at the basic or regular rate per hour. In plant No. 1, work on Sundays and holidays was paid at the basic or regular rate per hour, and likewise in plant No 2, and plant No. 4. In plant No. 3, work on Sundays or holidays was paid at one and one-half times the basic or regular rate.

(In District No. 6 the basic day was eight hours, and the basic week 48 hours, excepting in plant No. 5 where the

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basic day was 10 hours for Monday, 10½ hours on the days from Tuesday to Friday, and 8 hours for Saturday, and the basic week was 60 hours. In District No. 6 there was a guarantee of forty hours of pay per week in plants Nos. 1, 3, and 4, but no guarantee in plants Nos. 2 and 5. In District No. 6, overtime was paid for at one and one-half times the basic or regular rate excepting at plant No. 5, where it was paid for at the basic or regular rate. In District No. 6, work on Sundays or holidays was paid for at one and one-half times the basic or regular rate in plants Nos. 1 and 2, at double the basic or regular rate in plants Nos. 3 and 4, and at the basic or regular rate in plant No. 5.) (Pages 16 and 17, *Id.*)

The following data is taken from the *Monthly Labor Review* of August, 1922. Vol. XV, No. 2, published by the Bureau of Labor Statistics of the United States Department of Labor, pages 88 and 89. The first paragraph under this heading is as follows:

> "The following table taken from census reports shows the average number and per cent of wage earners working each specified number of hours per week in the manufacturing industries of the United States in the years, 1909, 1914 and 1919, together with the cumulative per cent of employees working each specified number of hours per week or less.
>
> "The number of employees reported is the average for the year, and was obtained by taking the actual number of wage earners at the close of one pay-roll period for each month in the year and dividing the sum of these wage earners by 12.
>
> "All of these employees of each establishment were classified as working the regular hours of the plant as a whole, although some of the employees may have

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worked different hours. It is believed that there would be no material difference in the number shown in each classification were the hours of each individual reported instead of taking the hours of the plant as a whole." (P. 88.)

Under the heading: "Regular hours of work per week in the manufacturing industries of the United States, 1909, 1914, and 1919," on page 89, *Id.*, the following information is given:

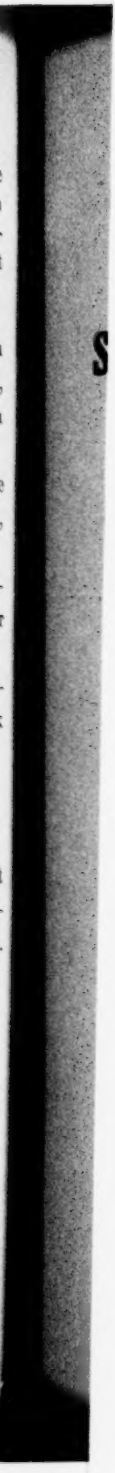
In the year 1909 the total number of employees in the manufacturing industries was 6,615,046, of whom 523,652, that is 7.9% worked 48 hours per week or under.

In 1914 of 7,036,247 employees in the manufacturing industries, 833,330 or 11.8% worked 48 hours per week or under.

In 1919 of 9,096,372 employees in the manufacturing industries 4,418,603, that is 48.6% worked 48 hours per week or under.

References to Kansas Industrial Court Act.

For list of references on the Kansas Industrial Court Act see Appendix to Bulletin No. 322 of the United States Department of Labor, Bureau of Labor Statistics (April, 1923).



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No. 739.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

THE CHAS. WOLFF PACKING COMPANY,
PLAINTIFF IN ERROR,

VS.

COURT OF INDUSTRIAL RELATIONS
OF THE STATE OF KANSAS,
DEFENDANT IN ERROR.

ERROR FROM THE SUPREME COURT OF
THE STATE OF KANSAS.

BRIEF AND ARGUMENT IN REPLY, ON BEHALF OF THE PLAINTIFF IN ERROR.

JOHN S. DEAN,
HARRY W. COLMERY,
D. R. HITE,
Attorneys for the Plaintiff in Error

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Further as to the so-called "Emergency."

The case argued in the industrial court's brief is not the case tried and decided by the Kansas Supreme Court. On page 5 counsel for the industrial court say: "A survey of the packing industry as a whole is necessary to a proper understanding of this case. This court has held

that it will take judicial notice of all matters of general knowledge. It should refer to the law that created the industrial court and then to the emergency that caused the industrial court to act." Then follows (p. 9) a survey of the packing industry throughout the United States, with particular reference to the large packing companies operating under what is called the Alschuler arrangement. Many facts and circumstances are set forth relating to wage controversies between packing house employes and the great packing companies, strikes, riots and violence during the year 1921. On page 15 it is said: "The packing industry was maintained in peace from 1917 to September 16, 1921, under the Alshuler Agreement, but when this agreement ended the general strike occurred. The above events in 1921 show that there was uneasiness, controversies, strikes, riots, calling out of national guards and bloodshed accompanying the controversies between employers and employees in the packing industry as to wages, hours of labor and working conditions. The industrial court, believing that an emergency existed, attempted by the order of May 2, 1921, to avert and prevent such a disturbance of the public peace and public welfare as occurred in other states. Its order was neither clearly unreasonable nor arbitrary and did have a relation to the purpose of preventing a strike in this industry."

In striking contrast is the statement of the case by the Kansas Supreme Court (R. 145-146):

> "The evidence, which was taken by A. L. Noble, of Wichita, who was by this court appointed

commissioner to take the evidence and make findings of fact and conclusions of law, shows that the defendant was engaged in operating a packing plant in the City of Topeka for the purpose of slaughtering animals for food; that the defendant employed about three hundred workmen in the operation of its plant; that a controversy arose between the defendant and its employes concerning wages, hours of labor and certain conditions under which the employes worked; that a meeting of the employes was called for the purpose of voting on a proposition to strike on account of the controversy; that at the meeting thus called, the employes voted to present the controversy to, the plaintiff rather than to strike; and that thereafter a complaint was filed with the plaintiff. It is now insisted that the evidence does not show such an emergency as gives the plaintiff jurisdiction to make any order on the complaint that was filed.

On the former hearing, it was contended by the defendant that the pleadings did not allege that such an emergency existed as gave to the plaintiff the extraordinary power of regulating the wages to be paid by the defendant to its employes. This court in the syllabus to the former opinion said:

'The petition filed in this action alleged that such an emergency existed as justified the court of industrial relations in making an investigation.'

What was said in the former opinion is approved. The defendant's plant is a small one, and it may be admitted that, if it should cease to operate, the effect on the supply of meat and food in this state would not greatly inconvenience the people of Kansas; yet, the plant manufactures food products and supplies meat to a part of the people of this state, and, if it should cease to operate, that source of supply would be cut off. The plant comes within the operation of the law, and the court of industrial relations has the power to

make the orders provided by law under the circumstances named in the statute. The petition alleged facts which show that such an emergency as the law contemplates existed and gave to the plaintiff authority to enquire concerning the matters alleged in the complaint. The evidence established facts sufficient to give to the court of industrial relations authority to make proper orders thereunder."

In the dissenting opinion the following comment is made upon the forgoing statement (R. 152):

"The complaint to the Court of Industrial Relations alleged broadly that the controversy between the defendant and its employes was one which endangered continuous operation and efficiency of the service rendered by the defendant's plant and that the controversy affected, and would affect, the manufacture and production of commodities necessary for human food within the state of Kansas. The petition to this court pleaded this complaint and the court properly enough held that the petition sufficiently alleged an emergency had arisen which justified the industrial court in taking cognizance of the complaint (*Court of Industrial Relations* v. *Packing Company*, 109 Kan. 629, 635, found in this record on page 37). The court now says, in effect, that the evidence taken by Commissioner Noble established the fact that an emergency had arisen such as the statute contemplates. Presumably the court refers to evidence bearing upon the meager facts stated in the opinion. If the court refers to other evidence establishing a statutory emergency, I have not been able to discover it by searching the record."

It is at once apparent that the judges of the state Supreme Court differed only as to the effect of the evidence in the record. The majority held that the evi-

dence in the record established an emergency such as the statute contemplated. The dissenting judges thought the statute required proof of a discomforting shortage in the state's food supply to justify the industrial court taking cognizance of the controversy; and, upon a full examination of the record, concluded that the facts stated in the court's opinion were the only facts shown by the record and were insufficient to establish the conditions precedent required by the act. The Kansas Supreme Court never considered or decided a case involving the facts now appearing in the industrial court's brief.

It is true that in considering the validity of the Adamson Act, this court in Wilson vs. New reviewed facts and circumstances within common knowledge evidently considered by Congress when it enacted the statute; and, it is also true that the Kansas Supreme Court reviewed facts and circumstances within common knowledge in considering the validity of the industrial court's statute, but this is far from holding that an order of an administrative tribunal may be sustained upon facts and circumstances not established at a hearing and upon notice as required by the statute delegating powers to administrative tribunals. In the late case of *Wichita Railroad & Light Company* v. *Public Utilities Commission* decided by this court at the present term (Nov. 13, 1922, 43 Sup. Ct. Rep. 51, 55) this court, with reference to an order made by the Kansas Public Utilities Commission, said:

> "We conclude that a valid order of the commission under the act must contain a finding of

fact, after hearing and investigation, upon which the order is founded, and that for lack of such a finding, the order in this case is void.

This conclusion accords with the construction put upon similar statutes in other states. *Public Utilities Commission* v. *Springfield Gas Co.*, 291 Ill. 209, *Public Utilities Co.* v. *B. & O. S. W. R. R. Co.*, 281 Ill. 405. Moreover, it accords with general principles of constitutional government. The maxim that a legislature may not delegate legislative power has some qualifications, as in the creation of municipalities and also in the creation of administrative boards to apply to the myriad details of rate schedules, the regulatory police power of the state. The latter qualification is made necessary in order that the legislative power may be effectively exercised. In creating such an administrative agency, the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its functions. It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined, and show a substantial compliance therewith to give validity to its action. When, therefore, such an administrative agency is required as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking the order is ineffective."

In considering the validity of acts passed by a legislature, doubtless this court may notice matters within common knowledge, but cannot thus supply the lack of evidence of conditions precedent to the lawful exercise of delegated power. This case deals with orders made by a legislative tribunal exercising delegated powers. It

is in the statute, evidence and findings shown upon the record, counsel must find justification for these orders, not in matters of common knowledge which might be urged to sustain original legislative enactments. The Kansas legislature could not, and did not, delegate to the industrial court power to determine upon what conditions wages, hours of labor and conditions might be regulated in packing houses; nor what controversies would justify interference between employers and employes engaged in this industry. Such legislative power could not be, and was not, delegated by this statute. In creating the industrial court the Kansas legislature, to prevent pure delegation of legislative power, enjoined upon it a certain course of procedure and certain rules for the performance of its functions. The act is full of such provisions. Section 3 declares certain industries to be affected with a public interest and "subject to supervision by the court as herein provided." Section 5 prescribes the rules of evidence for the taking of testimony and its perpetuation. Section 7 prescribes and limits the character of controversies over which the industrial court shall have jurisdiction. It requires that parties interested shall be summoned, investigations made, evidence taken followed by findings, etc.

Section 9 reads:

> "It is hereby declared necessary for the promotion of the general welfare that workers engaged in any of said industries, employments, utilities or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor; and that capital in-

vested therein shall receive at all times a fair rate of return to the owners thereof. The right of every person to make his own choice of employment and to make and carry out fair, just and reasonable contracts and agreements of employment, is hereby recognized. If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable and all such orders shall be enforced as in this act provided."

Section 10 reads:

"Before any hearing, trial or investigation shall be held by said court, such notice as the court shall deem necessary shall be given to all parties interested by registered U. S. mail addressed to said parties to the post office of the usual place of residence or business of said interested parties when same is known, or by the publication of notice in some newspaper of general circulation in the county in which said industry or employment, or the principal office of such utility or common carrier is located, and said notice shall fix the time and place of said investigation or hearing. The costs of publication shall be paid by said court out of any funds available therefor. Such notice shall contain the substance of the matter to be investigated, and shall notify all persons interested in said matter to be present at the time and place named to give such testimony or to take such action as they may deem proper."

With reference to these provisions Commissioner Noble concluded as matter of law (R. 128) "No order

of the industrial court is authorized except upon notice whether the investigation be instituted by complaint to the court or upon the court's own initiative. Section 10 of the act makes notice jurisdictional * * *." This view of the statute was approved by the Supreme Court (R. 146), and exceptions of the plaintiff in error to certain parts of the order of May 2, 1921, sustained, because of the failure to comply with the requirements of Section 10.

These provisions of the act and the interpretation placed upon them by the Supreme Court convince that it was indispensably necessary to the exercise of the jurisdiction conferred that the prescribed conditions should exist; that such conditions should be established by evidence, that findings based upon such evidence should be made, and, that the orders should be sustained by such evidence and findings.

The evidence taken before the industrial court is abstracted in this record (pp. 183 to 216). This testimony was taken upon a complaint filed on January 19, 1921 (R. 2), and at a hearing beginning March 3rd, and ending March 11, 1921 (R. 2). Without fear of successful contradiction, counsel for the plaintiff in error asserts there is neither evidence nor finding in the transcript in this case supporting the broad allegation of emergency in the statement of the defendant in error's complaint and petition. Attention is directed to the opinion of the industrial court filed on May 2, 1921 (R. 13-21). Except for a repetition in this opinion of the statement in the complaint of the existence of a contro-

versy, substantially in the language of Section 7, there is not a word indicating that any evidence was introduced tending to sustain this allegation. In the elaborate findings made a part of this opinion (R. 19, 20, 21) there is no reference whatever to an emergency.

The theory upon which counsel for the industrial court expect this court to consider facts and circumstances not shown upon the record and occurring after the hearing and decision by the industrial court is the theory upon which two of the judges of the industrial court proceeded in making the so-called temporary order of March 21, 1921 (R. 11), and is plainly stated by Hon. J. A. McDermott, one of the judges of the court, in his testimony before the commissioner (R. 49), where he said:

> "On March 21, 1921 (after the hearing had been concluded) there was threatened a strike by the Amalgamated Meat Cutters and Butchers Union, of which the employes of this plant were a part.
>
> Q. How did you know that?
>
> A. By general information that every other citizen got; it had reached the point where the strike had been voted and called and the Federal Government, the President of the United States, had called the packers and representatives of these unions to meet with the Secretary of Labor and Commerce on Wednesday; I think the strike had been voted to be called a day or two later than that. On Thursday or Friday a temporary adjustment was made through the efforts of the two secretaries mentioned and while this national strike was impending, which would involve the Wolff Packing Company, we felt, knowing by general information the

> controversy that existed nationally which was with reference to overtime and the reduction of wages, that a temporary order made by this court would probably avert a strike in the Wolff Packing Company plant."

Counsel for the packing company respectfully submit that this theory is opposed to the settled decisions in this court concerning the jurisdiction and powers of administrative tribunals of the character of the industrial court. In a number of cases presented to this court involving the validity of orders of the Interstate Commerce Commission and similar administrative bodies, it is consistently held not only that the conditions prescribed by statute must exist, but that the record must affirmatively establish the facts upon which the jurisdiction depends. In every case where it appeared from the record that orders made by these administrative tribunals were based upon information obtained by members of the commission, as shown in the testimony of Mr. McDermott, this court has held them invalid because opposed to the constitutional rights of the party affected by the order to a hearing.

In *United States* v. *B. & O. Ry.*, 226 U. S. 14-20, involving an order entered by the Interstate Commerce Commission, this court said:

> "We remark that it is stated in the commission's report that they base their conclusion more largely upon their own investigation than upon the testimony of the witnesses. It would be a very strong proposition to say that the parties were bound in the higher courts by a finding based upon

> specific investigations made in the case without notice to them. See *Washington, etc.*, v. *Fairchild*, 224 U. S. 510, 525. Such an investigation is quite different from a view by a jury taken with notice and subject to the order of a court, and different again from the question of the right of the commission to take notice of results reached by it in other cases, when its doing so is made to appear in the record and the facts thus noticed are specified, so that matters of law are saved."

In *Oregon Railway Co.* v. *Fairchild*, 224 U. S. 510, 533, with reference to orders of the Washington Railway Commission, this court said:

> "The insufficiency of the evidence submitted to the commission could not under this statute be supplied on the judicial review by a presumption arising from the failure of the carrier to disprove what had not been established."

In *Interstate Commerce Commission* v. *Louisville & Nashville Railway Co.*, 227 U. S. 89, this court reviewed an order made by the commission prescribing commodity rates. It appears that the commission made a single order in which it held the class rates complained of to be unreasonable, directed the old local rates to be restored, and a corresponding reduction in through rates. The railroad filed a bill to enjoin the commission from enforcing the order. At the hearing the railroad exhibited all that had been introduced before the commission, as a basis for the contention that the evidence before the commission utterly failed to show that the rates attacked by the complaint passed upon by the commission were unreasonable. The trial court held

that the order was void because there was no material evidence to support it. Answering a contention of the government based upon a provision in the statute that rates should be set aside if after a hearing "the commission shall be of the opinion that the charge was unreasonable," this court said (p. 91):

> "But the statute gave the right to a full hearing and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the Government's contention is correct it would mean that the commission had a power possessed by no other officer, administrative body, or tribunal under our Government. It would mean that where rights depend upon facts, the commission could disregard all rules of evidence and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.
>
> In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, *quasi*-judicial in character, are void, if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence.' (Citing cases.) Or if the facts found do not as a matter of law support the order made."

(p. 93) "The Government further insists that the Commerce Act requires the Commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created, and having been given legislative

power to make rates, it can act, as could Congress, on such information, and therefore its findings must be presumed to have been supported by such information, even though not formally proved at the hearing. But such a construction would nullify the right to a hearing—for manifestly there is no hearing when the party does not know what evidence is offered or considered and is not given an opportunity to test, explain or refute."

With reference to the informality of proceedings before the commission this court remarked that it was not limited by the strict rules which prevail in suits between private parties. "But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the commission had before it extraneous, unknown but presumptively sufficient information to support the finding."

The necessity for proof that serious discomfort would result to the people of Kansas because of a short-

age of their food supply, as a condition precedent to the making of the orders now in question, is accentuated by a comparison of Section 7, authorizing compulsory orders, and Section 21, providing for the voluntary submission of controversies between employers and employes "as to wages, hours of employment, or working or living conditions, in any industries not hereinbefore specified * * *." The cases under Section 7 must involve controversies endangering the public peace or threatening the public health. Cases under Section 21 need not be of so serious a nature. Where the controversy is not shown to endanger the public peace or threaten the public health, the industrial court has no authority to proceed under Section 7. It necessarily follows that unless the record discloses a controversy endangering the public peace or threatening the public health, and findings made by the industrial court based upon such evidence, the order attempting "to settle and adjust all such controversies by such findings and orders," is ineffective and void because the exercise of the delegated power is not authorized except upon the existence of such controversy.

The packing company claims that it was entitled to an opportunity by proof and argument to controvert the claims asserted in the complaint filed in the industrial court, before a tribunal bound not only to listen, but to give legal effect to the facts established by the evidence. In the absence of any showing by the industrial court that a controversy existed such as endangered the public peace or threatened the public health, the packing com-

pany was not called upon to introduce any evidence to the contrary. But in this case it did introduce evidence abundantly establishing: (a) That its contribution to the food supply of Kansas was very small; (b) that it was ready, able and willing to go on with its operations with employes satisfied to accept the wages it felt able to pay; (c) that none of its employes had left its service because of dissatisfaction on account of wages; (d) that it could not afford to pay any increase in wages over those offered; and, generally, that its management was able to go on with the corporate enterprise unaffected by the dissatisfaction of a few of its employes with the wages it was able to pay. In such circumstances the orders now in question were made without jurisdiction and for that reason alone are void.

On the question of confiscation resulting from the order of May 2, 1921.

The contention of the plaintiff in error that the effect of the order in question was to increase the packing company's operating expenses and therefore confiscate its property at a time when it was unable to make any return upon its investment is resisted by the industrial court apparently on several grounds. It is claimed that the packing company did not show the ~~question~~ causes of the losses it had sustained and that at all events the order was temporary and it would not have cost more than $6,000.00 for the packing company to put it into effect for a sixty day period.

The commissioner found (R. 126) neither the losses in operation nor the reduction in operations during the six months ending on April 30, 1921, were caused by any inability of the respondent to secure sufficient workmen at the wages paid."

He further said (R. 126): "The losses of the packing company in the operation of its plant have been heavier during the existence of the working contract of May 10, 1920, than at any other period, and the losses in operation, so far as amount is concerned, may be accounted for in the combination of depreciation in market value of stocks on hand and bonus and extra pay for overtime covered by that contract.

In other words, Mr. Noble concluded from the evidence that none of the loss could be attributed to the company's inability to secure a sufficient number of employes at the wages it was willing to pay, and that the depreciation in the value of its products on hand and the large wages it was compelled to pay under the contract which expired before it made the reduction caused the large amount of the loss. An examination of the financial statements referred to in the first brief shows that the sale for the year ending October 30, 1920, was $7,440,725.00, an average of $620,000.00 per month, whilst for the six months ending April 30, 1921, the sales averaged $380,000.00 per month. From the same source it may be seen that the capacity of the plant is about 5000 hogs per week and that only about 2800 hogs per week were killed and cured during the six months ending April 30, 1921. These findings should

be sufficient to convince business men that the reason for the losses, over and above the increase in the pay roll due to the large wages and bonus under the expired contract, is the enormous reduction in the market price of packing house products and the great shrinkage in the volume of sales. It is a business axiom that profits in a manufacturing plant cannot be expected unless operated continuously to capacity. When packing house owners cannot sell their products plant operations must be cut down because storage capacity is soon exhausted. Cutting down operations always and inevitably means loss. The financial statements furnished to the commissioner and appearing in the record account for every penny of revenue received during the several periods.

The expense and income statements go into minute details of the expenditures. All of these items were allowed by the commissioner as legitimate charges against income, except the items of bond interest, central office and administration expenses. The industrial court's accountant was given free access to the packing company's books. Counsel for the industrial court cross examined the accountants at great length. Commissioner Noble asked them many questions; yet, none of the testimony suggested or intimated that any part of the money arising out of the plant's operations had been used in the operation of other plants conducted by the Allied Packers, Inc. Such a charge would be baseless if made and cannot be sustained, even by inference upon the record. Again reference is made to counsel's admission made for the purpose of an argument in the hearing before the

industrial court. With reference to this the commissioner says (R. 159):

> "This admission was not justified in the facts unless such losses are reflected in the central office administration charges heretofore mentioned in these findings, and which are eliminated as operating expenses of the Wolff Plant."

It is difficult to see how it would be possible for the packing company to have done more than it did do to throw a strong light upon all of its transactions and to give the industrial court and the Supreme Court's commissioner every opportunity and assistance in arriving at the facts. None of the expenditures, except bond interest, central office and administration expenses, were criticised by counsel or the commissioner. These items were not considered in making up the commissioner's findings as to the actual losses sustained by the packing company. Excluding these items, it was established to the point of demonstration that for the years 1919, 1920 and 1921, up to the time of the hearing, the operations of the packing company had resulted in continuous loss. It is submitted, therefore, that no ground exists for the suggestion in the industrial court's brief that the cause and extent of the losses is unexplained upon this record.

The industrial court complains that the packing company should have made a trial under the order for sixty days and quotes from Section 8 of the industrial court's statute to the effect that if either party to a controversy covered by Section 7 shall comply with an order of the industrial court for sixty days "and shall

find said order unjust, unreasonable or impracticable, said party may apply to said Court of Industrial Relations for a modification thereof and said Court of Industrial Relations shall hear and determine said application and make findings and orders in like manner and with like effect as originally." It is further complained that nothing stood in the way of the packing company coming to an agreement with its employes. The order of May 2, 1921, provides that it shall continue until changed by the court or changed by agreement of the parties *with the approval of the court*.

It is further said in the brief that improvement in wages and terms of employment naturally would have resulted in a better service from the workers (p. 66 of the Brief).

On page 69 it is said:

> "A trial by the packing company of the industrial court's order for sixty days would have made no substantial difference in the expenditures of the packing company as compared to the amount of its receipts and expenditures * * *. Allowing thirty days further for the time of hearing before the industrial court and a decision on the question of modification of the order, the increased payments for the ninety days would have been a little over $6,000.00. In business of the size of the packing company, that is a very small amount."

Are we to understand that the packing company can be required by legislation to turn over $6,000.00 of its capital to its employes so as to enable the industrial court to determine the effect of an experiment. It seems to counsel for the packing company that this suggestion

is without merit. No reason is perceived why $6,000.00 of the stockholders' money should be turned over to the employes, any more than there is reason for turning over to the employes the whole of the capital, property, business and affairs of this corporation. The $6,000.00 referred to by counsel was the private property of the owners of this property. It was as much protected under the Fourteenth Amendment to the Constitution as though it had been $6,000,000.00.

After a careful consideration of the arguments advanced by the industrial court, the packing company takes leave to say that the questions involved in this writ of error are whether the State of Kansas can fix the wages to be paid by owners of packing houses to packing house employes and by increasing the company's pay roll cause it to suffer additional loss at a time when its operating expenses and costs of raw material exceed its revenue from sales. If this can be done by the Kansas legislature the judgment of the Kansas Supreme Court can be affirmed. If the owners of this property are protected by the Fourteenth Amendment forbidding any state to deprive any person within its jurisdiction of his life, liberty or property without due process of law, and forbidding the denial to any person of the equal protection of the laws, this judgment should be reversed because the order it seeks to enforce is void.

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April, 1923.

CHAS. WOLFF PACKING COMPANY *v.* COURT OF INDUSTRIAL RELATIONS OF THE STATE OF KANSAS.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 739. Argued April 27, 1923.—Decided June 11, 1923.

1. Legislative authority to abridge freedom of contract can be justified only by exceptional circumstances, and the restraint must not be arbitrary or unreasonable. P. 533.
2. Businesses said to be clothed with a public interest justifying some public regulation, may be divided into three classes:
(*a*) Those which are carried on under authority of a public grant of privileges expressly or impliedly imposing the affirmative duty of rendering public service demanded by any member of the public,—e. g., the business of a common carrier, or a public utility.
(*b*) Certain occupations, regarded as exceptional, the public interest attaching to which, recognized from earliest times, has survived the period of arbitrary regulation of all trades and callings by Parliament or Colonial legislatures,—e. g., inns, cabs, and grist mills.
(*c*) Other businesses which have come to have such a peculiar relation to the public that government regulation has been superimposed upon them,—where the owner, by devoting his business to the public use, in effect grants the public an interest in that use, and subjects himself to regulation to the extent of such interest. P. 535.

3. A declaration by a legislature that a business has become affected by a public interest is not conclusive of the question whether attempted regulation on that ground is justified. P. 536.
4. In the present day one does not devote one's property or business to public use, or clothe it with a public interest, merely by making commodities for, and selling them to, the public, in the common callings. P. 537.
5. The option to deal or abstain from dealing, usually distinguishes private from quasi-public occupations. P. 537.
6. Whether the public has become so peculiarly dependent on a particular business that the owner, by engaging therein, subjects himself to intimate public regulation, must be determined upon the facts of each case. P. 538.
7. The extent to which a business which has become "clothed with a public interest" may be regulated depends upon the nature of the business, its relation to the public and the abuses reasonably to be feared. P. 539.
8. Assuming that the business of manufacturing and preparing food for human consumption may be put in the third class of quasi-public businesses noted above,—par. 2(c)—the Industrial Relations Act of Kansas, in seeking, as a measure for protection of public peace, health and general welfare, to enforce continuity and efficiency of the business by compelling employer and employees to submit controversies over wages to state arbitration, and in requiring the employer to pay the wages so fixed (even if confiscatory), and in forbidding the employee to join in strikes against them,— exceeds the limit of permissible regulation and deprives the employer of property, and both employer and employee of liberty, without due process of law, in violation of the Fourteenth Amendment. P. 540.
9. Public regulation can secure continuity in a business against owner and employee only when the obligation of continued service is direct and is assumed when the business is entered upon. Pp. 541, 543.
10. Where the theory and purpose of a statute depend upon compulsion of both employer and employee, its effect upon the employee may be considered when its constitutionality is attacked by an employer. P. 541.
11. The compulsory arbitration attempted under the Kansas statute in this case was not justifiable on the ground of temporary emergency. P. 542. *Wilson* v. *New*, 243 U. S. 332, distinguished.

111 Kans. 501, reversed.

This case involves the validity of the Court of Industrial Relations Act of Kansas. Chapter 29, Special Session, Laws of 1920. The act declares the following to be affected with a public interest: First, manufacture and preparation of food for human consumption; second, manufacture of clothing for human wear; third, production of any substance in common use for fuel; fourth, transportation of the foregoing; fifth, public utilities and common carriers. The act vests an Industrial Court of three judges with power upon its own initiative or on complaint to summon the parties and hear any dispute over wages or other terms of employment in any such industry, and if it shall find the peace and health of the public imperiled by such controversy, it is required to make findings and fix the wages and other terms for the future conduct of the industry. After sixty days, either party may ask for a readjustment and then the order is to continue in effect for such reasonable time as the court shall fix, or until changed by agreement of the parties. The Supreme Court of the State may review such orders and in case of disobedience to an order that court may be appealed to for enforcement.

The Charles Wolff Packing Company, the plaintiff in error, is a corporation of Kansas engaged in slaughtering hogs and cattle and preparing the meat for sale and shipment. It has $600,000 capital stock and total annual sales of $7,000,000. More than half its products are sold beyond the State. It has three hundred employees. There are many other packing houses in Kansas, of greater capacity. This is considered a small one.

In January, 1921, the president and secretary of the Meat Cutters Union filed a complaint with the Industrial Court against the Packing Company respecting the wages its employees were receiving. The Company appeared and answered and a hearing was had. The court made findings, including one of an emergency, and an order as

to wages, increasing them over the figures to which the Company had recently reduced them. The Company refused to comply with the order and the Industrial Court then instituted mandamus proceedings in the Supreme Court to compel compliance. That court appointed a commissioner to consider the record, to take additional evidence and report his conclusions. He found that the Company had lost $100,000 the previous year, and that there was no sufficient evidence of an emergency or danger to the public from the controversy to justify action by the Industrial Court. The Supreme Court overruled his report and held that the evidence showed a sufficient emergency.

The prescribed schedule of wages and the limitation of hours and the rate of pay required for overtime resulted in an increase in wages of more than $400 a week.

It appeared from the evidence that the Company and plant were under the control of, and in business association with, what were called "The Allied Packers," who have plants in various cities and compete with the so-called Big Five Packers, the largest in the country, that the products of the Wolff Packing Company are sold in active competition with such products made by other concerns throughout the United States. It appeared further that about the time of this controversy, a strike was threatened in the packing houses of the Big Five which the President of the United States used his good offices to settle. The chief executive of the Wolff Company testified that there had been no difficulty in securing all the labor it desired at the reduced rates offered. The Industrial Court conceded that the Wolff Company could not operate on the schedule fixed without a loss, but relied on the statement by its president that he hoped for more prosperous times.

The Packing Company brings this case here on the ground that the validity of the Industrial Court Act was

upheld although challenged as in conflict with the provision of the Fourteenth Amendment that no State shall deprive any person of liberty or property without due process of law.

Mr. D. R. Hite and *Mr. John S. Dean*, with whom *Mr. Harry W. Colmery* was on the briefs, for plaintiff in error.

Mr. John G. Egan and *Mr. Chester I. Long*, with whom *Mr. Charles B. Griffith*, Attorney General of the State of Kansas, *Mr. Randal C. Harvey* and *Mr. Austin M. Cowan* were on the briefs, for defendant in error.

The State's power extends to the promotion of public convenience or general prosperity,—to so dealing with the conditions which exist in the State as to bring out of them the greatest welfare of its people. *Bacon* v. *Walker*, 204 U. S. 311.

A decision of the highest court of the State, declaring a use to be public in its nature, will be accepted by this Court, unless clearly not well founded. *Jones* v. *Portland*, 245 U. S. 217; *Green* v. *Frazier*, 253 U. S. 233.

It has been held by this Court that a state statute is valid which permitted the condemnation of land for the construction of an irrigation ditch to supply water for the uses of one person, *Clark* v. *Nash*, 198 U. S. 361; and that a State may authorize a condemnation of a right of way for an aerial or bucket line to serve in the operation of a gold mine. *Strickland* v. *Highland Boy Gold Mining Co.*, 200 U. S. 527. See *Mount Vernon-Woodberry Cotton Duck Co.* v. *Alabama Interstate Power Co.*, 240 U. S. 32.

The fire insurance business may be regulated as affected with a public interest. *German Alliance Insurance Co.* v. *Lewis*, 233 U. S. 389; *La Tourette* v. *McMaster*, 248 U. S. 465. And so may the banking business. *Noble State Bank* v. *Haskell*, 219 U. S. 104. The charges of a public stockyards company may be regulated. *Cotting* v. *Godard*, 183 U. S. 79.

In *Jones* v. *Portland, supra,* this Court held that the business of furnishing fuel to the citizens of Portland, Maine, was a public use, and that it was within the province of the State to provide by statute for the establishment of municipal fuel yards. In *Green* v. *Frazier,* 253 U. S. 233, it was held within the province of the State to engage in the business of dealing in foodstuffs and providing aid to citizens to build houses.

Phenomenal developments of the past fifty years have completely changed the customs, practices and manner of living of the American people. The meat industry has been completely revolutionized. The business of killing the live stock and of manufacturing the carcass into food for human consumption has been highly specialized and centralized and is controlled by a few great corporations employing hundreds of thousands of workmen operating in the great commercial centers and shipping their food products all over this country and to foreign countries. Many millions of our people are wholly dependent upon the continuous and efficient operation of the packing industry for their daily ration of meat. Millions of live-stock growers are dependent upon the continuous and efficient operation of the same industry for a market for their live stock. All this has impressed with a public interest the packing industry.

Much space is spent in the printed argument of opposing counsel on the constitutionality of the act so far as it affects the milling industry and the clothing industry. Neither of those questions is here for decision. The only question which this Court will determine is the constitutionality of the act as applied to this plaintiff in error. The Industrial Court Act is not open to attack in this case upon grounds which might possibly arise, but which do not affect the party questioning its constitutionality. *Arizona Employers' Liability Cases,* 250 U. S. 400.

The packing industry is affected with a public interest. It has been made the subject of congressional action, as

evidenced by the Packers and Stockyards Act of 1921. *Stafford* v. *Wallace*, 258 U. S. 495.

The packing industry being affected with a public interest, it is therefore subject to regulation by the State. *Munn* v. *Illinois*, 94 U. S. 113. It is argued, however, by the Packing Company that its plant is comparatively small and does not stand at the gateway of commerce, as the warehouses did in the *Munn Case*. That, however, is an old contention which has been met by this Court and overruled. *Brass* v. *North Dakota*, 153 U. S. 391.

The power to regulate an industry is not dependent upon its size.

The history of the packing industry shows that in 1886 and 1904 there were serious strikes, attended by disturbances of the peace, loss of life and shortage in meat production. There have been for years frequent labor controversies and disturbances in that business.

The order of the Industrial Court was but temporary, made to meet an emergency, and did not run as long as did the rates provided in the Adamson Law, (*Wilson* v. *New*, 243 U. S. 332,) which were for a period of six to eleven months. This Court has frequently held that a test should be made to ascertain whether or not an order made fixing rates is confiscatory.

In the compulsory insurance cases the working conditions of strictly private industries were regulated, and the employer was obliged to add, to the wages paid, the insurance premium paid on each employee necessary to provide compensation for the injured employee—and this regardless of the question of negligence. *Mountain Timber Co.* v. *Washington*, 243 U. S. 219; *Thornton* v. *Duffy*, 254 U. S. 361. In the workmen's compensation cases, *Arizona Employers' Liability Cases*, *supra*, the State by law added, to the cost of labor paid by the manufacturer, compensation for injuries occurring without fault of the employer, which had theretofore been borne by the em-

ployees. Thus the wages paid were in fact increased by legislative act. What had theretofore been borne by the workmen out of their wages was passed to the employer, to be paid by him in addition to the other wages paid. If the legislature can increase the cost of labor to the manufacturer by making him bear the cost of injuries arising out of accidents, then why cannot the State under similar circumstances raise wages of employees slightly in the face of an emergency?

The Packing Company insists that under the doctrine of *Brooks-Scanlon Co.* v. *Railroad Commission,* 251 U. S. 396, the operation of a public utility cannot be compelled at a loss. That is correct. The order in this case does not require appellant to operate. The Packing Company can cease to operate if it does so in good faith and not for the purpose of evading the orders of the Industrial Court. That is recognized in the law itself. It can also reduce the number of employees which it hires, if it does so in good faith and not for the purpose of evading an order entered pursuant to the act.

It has been repeatedly recognized by this Court that the State has an interest in the working conditions and hours of labor in mills and manufacturing establishments and dangerous industries. The packing industry is both a dangerous industry and a manufacturing establishment. The power of the Government to prevent strikes dangerous to public peace and welfare has been recognized. *In re Debs,* 158 U. S. 564; *Wilson* v. *New,* 243 U. S. 332; *United States* v. *Railway Employees' Dept., A. F. L.,* 283 Fed. 479. That States have this power must be conceded. It must therefore be admitted that a State has the power to do that which is necessary to make effective its exercise of authority in this respect. *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire,* 219 U. S. 549.

It would be futile to give the Industrial Court authority to settle industrial disputes and not give it the

power to prescribe a temporary minimum wage. It would likewise be futile to give to the Industrial Court the power to prescribe hours of labor and a minimum wage scale, if the company could make the award ineffective by reducing the number of hours of employment to a nominal amount each month.

In *Wilson* v. *New*, 243 U. S. 332, the majority opinion recognized that the Adamson Act amounted to compulsory arbitration, which Congress had the authority to enact.

The Supreme Court of Kansas has determined that an emergency existed in the present case. That determination must stand unless palpably wrong. In the emergency rent cases it was recognized that the legislative branch of government had the power to regulate a business in order to tide over a public emergency. *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242.

The burden was upon the Packing Company to establish that the order of the Industrial Court was confiscatory. The bare presentation of evidence showing deficits in operation is not proof of confiscation.

The order of the Industrial Court, if a proper exercise of the police power over a business affected with a public interest, does not become unconstitutional by virtue of any loss of profits to the Packing Company. On this phase of the case the Packing Company's contention amounts to this: if a business is not making a profit the State is deprived of the power to regulate it in the interest of the public health, the public morals, the public safety, the public peace, and the public welfare. We do not understand such to be the effect of the decisions of this Court. The same contentions have been raised as to every regulation made under the police power since the enactment of the Fourteenth Amendment. *Mugler* v. *Kansas*,

123 U. S. 623; *California Reduction Co.* v. *Sanitary Reduction Works,* 199 U. S. 306; *Hadacheck* v. *Los Angeles,* 239 U. S. 394.

Financial impossibility does not violate the Fourteenth Amendment, if the act and order in question are otherwise a proper exercise of the police power of the State. *Hebe Co.* v. *Shaw,* 248 U. S. 297.

The police power "is a continuing one, and a business lawful today may in the future, because of the changed situation, the growth of population, or other causes, become a menace to the public health and welfare, and be required to yield to the public good." *Dobbins* v. *Los Angeles,* 195 U. S. 223; *Pierce Oil Corporation* v. *Hope,* 248 U. S. 498.

Within the doctrine of *Noble State Bank* v. *Haskell,* 219 U. S. 104, the increase was so slight and the advantage to the public and the Packing Company so great in improving the working conditions and the efficiency of its employees, that the taking, if any, did not fall within the Fourteenth Amendment. We insist, however, that in the proper exercise of the police power, a State is not limited in its application to such industries or concerns as are making a profit. The law cannot be made applicable to those concerns which are making a profit, and inapplicable to those who are losing. *Arizona Employers' Liability Cases,* 250 U. S. 400; *German Alliance Ins. Co.* v. *Lewis,* 233 U. S. 389; *Powell* v. *Pennsylvania,* 127 U. S. 678; *Murphy* v. *California,* 225 U. S. 623; *Reinman* v. *Little Rock,* 237 U. S. 171.

The Packing Company objects to the act because it is claimed it does not affect employers and their employees alike. "To complain of a ruling, one must be made a victim of it." *Lehon* v. *Atlanta,* 242 U. S. 53.

The classification specified in the Industrial Court Act, § 30, is reasonable and proper.

The question for determination in this case is whether or not the legislative action has a reasonable relation to

the governmental authority to further public health, public morals, public safety, public peace, public convenience and the public general prosperity. If it has, the doctrine of freedom of contract cannot make the act unconstitutional. *Prudential Ins. Co.* v. *Cheek*, 259 U. S. 530; *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219 U. S. 549.

The employer has no vested right in the conditions which obtained at the common law and prior to the enactment of the statute. In *Wilson* v. *New*, 243 U. S. 332, freedom of contract with reference to wages was taken away from the railroads in an emergency. Freedom of contract as to wages has also yielded to state action in those matters held not to be against the governmental power, but in aid thereof, and as to which the Government could act, such as: Measuring coal before screening, so as better to fix the miners' wages, *McLean* v. *Arkansas*, 211 U. S. 539; *Rail & River Coal Co.* v. *Yaple*, 236 U. S. 338; redeeming in cash store-orders issued for wages, *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13; paying employees in cash at certain rates when they are discharged, *St. Louis, etc. Ry. Co.* v. *Paul*, 173 U. S. 404; *Keokee Co.* v. *Taylor*, 234 U. S. 224, and at all times as often as twice a month, *Erie R. R. Co.* v. *Williams*, 233 U. S. 685, and in quantity rates as coal is screened, instead of weight before screening, or weight as ascertained in some other way, *McLean* v. *Arkansas*, 211 U. S. 539; *Schmidinger* v. *Chicago*, 226 U. S. 578; *Rail & River Coal Co.* v. *Yaple*, 236 U. S. 338; barring a railway in a personal injury suit from pleading as a defense the receipt of some fraternal benefit, *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219 U. S. 549, and by adding to the cost of manufacturing in addition to wages, compensation to the employees for injuries occurring in the course of employment, without regard to the question of negligence, *Arizona Employers' Liability Cases*, 250 U. S. 400; *Mountain Timber Co.* v.

Washington, 243 U. S. 219; *Thornton* v. *Duffy*, 254 U. S. 361.

Freedom of contract as to hours and conditions of labor has had to yield to the governmental power where the police power has prescribed: Eight-hour day as basic day, with overtime thereafter, *Wilson* v. *New*, 243 U. S. 332; ten-hour day in mills, factories and manufacturing establishments, and time and a half for overtime, *Bunting* v. *Oregon*, 243 U. S. 426; sixteen hours continuous service on railroads, *Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Comm.*, 221 U. S. 612; *Missouri, Kansas & Texas Ry. Co.* v. *United States*, 231 U. S. 112; eight hours per day in mines and smelters, *Holden* v. *Hardy*, 169 U. S. 366; maximum hours for labor for women, *Muller* v. *Oregon*, 208 U. S. 412; *Bosley* v. *McLaughlin*, 236 U. S. 385; *Miller* v. *Wilson*, 236 U. S. 373; *Riley* v. *Massachusetts*, 232 U. S. 671; eight-hour day on public work, *Atkin* v. *Kansas*, 191 U. S. 207; liability for injury under workmen's compensation act, regardless of question of negligence, *Arizona Employers' Liability Cases*, 250 U. S. 400; *New York Central R. R. Co.* v. *White*, 243 U. S. 188; *Same* v. *Bianc*, 250 U. S. 596; the time and place of paying seaman's wages, *The Bark Eudora*, 190 U. S. 169.

This yielding freedom of contract as to working conditions is also exemplified in the various factory acts and safety appliance laws which have been sustained, but as to which citation of authority is unnecessary.

Mr. Chief Justice Taft, after stating the case as above, delivered the opinion of the Court.

The necessary postulate of the Industrial Court Act is that the State, representing the people, is so much interested in their peace, health and comfort that it may compel those engaged in the manufacture of food, and clothing, and the production of fuel, whether owners or

workers, to continue in their business and employment on terms fixed by an agency of the State if they can not agree. Under the construction adopted by the State Supreme Court the act gives the Industrial Court authority to permit the owner or employer to go out of the business, if he shows that he can only continue on the terms fixed at such heavy loss that collapse will follow; but this privilege under the circumstances is generally illusory. *Block* v. *Hirsh*, 256 U. S. 135, 157. A laborer dissatisfied with his wages is permitted to quit, but he may not agree with his fellows to quit or combine with others to induce them to quit.

These qualifications do not change the essence of the act. It curtails the right of the employer on the one hand, and of the employee on the other, to contract about his affairs. This is part of the liberty of the individual protected by the guaranty of the due process clause of the Fourteenth Amendment. *Meyer* v. *Nebraska*, *ante*, 390. While there is no such thing as absolute freedom of contract and it is subject to a variety of restraints, they must not be arbitrary or unreasonable. Freedom is the general rule, and restraint the exception. The legislative authority to abridge can be justified only by exceptional circumstances. *Adkins* v. *Children's Hospital*, 261 U. S. 525.

It is argued for the State that such exceptional circumstances exist in the present case and that the act is neither arbitrary nor unreasonable. Counsel maintain:

First. The act declares that the preparation of human food is affected by a public interest and the power of the legislature so to declare and then to regulate the business is established in *Munn* v. *Illinois*, 94 U. S. 113; *Budd* v. *New York*, 143 U. S. 517; *Brass* v. *Stoeser*, 153 U. S. 391; *Noble State Bank* v. *Haskell*, 219 U. S. 104; *German Alliance Insurance Co.* v. *Lewis*, 233 U. S. 389; and *Block* v. *Hirsh*, 256 U. S. 135.

Second. The power to regulate a business affected with a public interest extends to fixing wages and terms of employment to secure continuity of operation. *Wilson* v. *New*, 243 U. S. 332, 352, 353.

Businesses said to be clothed with a public interest justifying some public regulation may be divided into three classes:

(1) Those which are carried on under the authority of a public grant of privileges which either expressly or impliedly imposes the affirmative duty of rendering a public service demanded by any member of the public. Such are the railroads, other common carriers and public utilities.

(2) Certain occupations, regarded as exceptional, the public interest attaching to which, recognized from earliest times, has survived the period of arbitrary laws by Parliament or Colonial legislatures for regulating all trades and callings. Such are those of the keepers of inns, cabs and grist mills. *State* v. *Edwards*, 86 Me. 102; *Terminal Taxicab Co.* v. *District of Columbia*, 241 U. S. 252, 254.

(3) Businesses which though not public at their inception may be fairly said to have risen to be such and have become subject in consequence to some government regulation. They have come to hold such a peculiar relation to the public that this is superimposed upon them. In the language of the cases, the owner by devoting his business to the public use, in effect grants the public an interest in that use and subjects himself to public regulation to the extent of that interest although the property continues to belong to its private owner and to be entitled to protection accordingly. *Munn* v. *Illinois*, 94 U. S. 113; *Spring Valley Water Works* v. *Schottler*, 110 U. S. 347; *Budd* v. *New York*, 117 N. Y. 1, 27; s. c. 143 U. S. 517; *Brass* v. *Stoeser*, 153 U. S. 391; *Noble State Bank* v. *Haskell*, 219 U. S. 104; *German Alliance Insurance Co.*

v. *Lewis*, 233 U. S. 389; *Van Dyke* v. *Geary*, 244 U. S. 39, 47; *Block* v. *Hirsh*, 256 U. S. 135.

It is manifest from an examination of the cases cited under the third head that the mere declaration by a legislature that a business is affected with a public interest is not conclusive of the question whether its attempted regulation on that ground is justified. The circumstances of its alleged change from the status of a private business and its freedom from regulation into one in which the public have come to have an interest are always a subject of judicial inquiry.

In a sense, the public is concerned about all lawful business because it contributes to the prosperity and well being of the people. The public may suffer from high prices or strikes in many trades, but the expression "clothed with a public interest," as applied to a business, means more than that the public welfare is affected by continuity or by the price at which a commodity is sold or a service rendered. The circumstances which clothe a particular kind of business with a public interest, in the sense of *Munn* v. *Illinois* and the other cases, must be such as to create a peculiarly close relation between the public and those engaged in it, and raise implications of an affirmative obligation on their part to be reasonable in dealing with the public.

It is urged upon us that the declaration of the legislature that the business of food preparation is affected with a public interest and devoted to a public use should be most persuasive with the Court and that nothing but the clearest reason to the contrary will prevail with the Court to hold otherwise. To this point, counsel for the State cite *Clark* v. *Nash*, 198 U. S. 361; *Strickley* v. *Highland Boy Gold Mining Co.*, 200 U. S. 527; *Hairston* v. *Danville & Western Ry. Co.*, 208 U. S. 598, 600; *Union Lime Co.* v. *Chicago & Northwestern Ry. Co.*, 233 U. S. 211; *Jones* v. *Portland*, 245 U. S. 217, and *Green* v.

Frazier, 253 U. S. 233. These cases are not especially helpful in determining how a business must be devoted to a public use to clothe it with a public interest so as to permit regulation of rates or prices. They were of two classes, one where condemnation proceedings were opposed on the ground that private property could only be taken for a public use and the use contemplated by the legislature was not a public one. The other was of tax suits in which the validity of the tax was denied because the use for which the tax was levied was not a public one. "Public use" in such cases would seem to be a term of wider scope than where it is used to describe that which clothes property or business "with a public interest." In the former, the private owner is fully compensated for his property. In the latter, the use for which the tax is laid may be any purpose in which the State may engage, and this covers almost any private business if the legislature thinks the State's engagement in it will help the general public and is willing to pay the cost of the plant and incur the expense of operation.

It has never been supposed, since the adoption of the Constitution, that the business of the butcher, or the baker, the tailor, the wood chopper, the mining operator or the miner was clothed with such a public interest that the price of his product or his wages could be fixed by State regulation. It is true that in the days of the early common law an omnipotent Parliament did regulate prices and wages as it chose, and occasionally a Colonial legislature sought to exercise the same power; but nowadays one does not devote one's property or business to the public use or clothe it with a public interest merely because one makes commodities for, and sells to, the public in the common callings of which those above mentioned are instances.

An ordinary producer, manufacturer or shopkeeper may sell or not sell as he likes, *United States* v. *Trans-Missouri*

Freight Association, 166 U. S. 290, 320; *Terminal Taxicab Co.* v. *District of Columbia*, 241 U. S. 252, 256, and while this feature does not necessarily exclude businesses from the class clothed with a public interest, *German Alliance Insurance Co.* v. *Lewis*, 233 U. S. 389, it usually distinguishes private from quasi-public occupations.

In nearly all the businesses included under the third head above, the thing which gave the public interest was the indispensable nature of the service and the exorbitant charges and arbitrary control to which the public might be subjected without regulation.

In the preparation of food, the changed conditions have greatly increased the capacity for treating the raw product and transferred the work from the shop with few employees to the great plant with many. Such regulation of it as there has been, has been directed toward the health of the workers in congested masses, or has consisted of inspection and supervision with a view to the health of the public. But never has regulation of food preparation been extended to fixing wages or the prices to the public, as in the cases cited above where fear of monopoly prompted, and was held to justify, regulation of rates. There is no monopoly in the preparation of foods. The prices charged by plaintiff in error are, it is conceded, fixed by competition throughout the country at large. Food is now produced in greater volume and variety than ever before. Given uninterrupted interstate commerce, the sources of the food supply in Kansas are countrywide, a short supply is not likely, and the danger from local monopolistic control less than ever.

It is very difficult under the cases to lay down a working rule by which readily to determine when a business has become "clothed with a public interest." All business is subject to some kinds of public regulation; but when the public becomes so peculiarly dependent upon a particular business that one engaging therein subjects

himself to a more intimate public regulation is only to be determined by the process of exclusion and inclusion and to gradual establishment of a line of distinction. We are relieved from considering and deciding definitely whether preparation of food should be put in the third class of quasi-public businesses, noted above, because even so, the valid regulation to which it might be subjected as such, could not include what this act attempts.

To say that a business is clothed with a public interest, is not to determine what regulation may be permissible in view of the private rights of the owner. The extent to which an inn or a cab system may be regulated may differ widely from that allowable as to a railroad or other common carrier. It is not a matter of legislative discretion solely. It depends on the nature of the business, on the feature which touches the public, and on the abuses reasonably to be feared. To say that a business is clothed with a public interest is not to import that the public may take over its entire management and run it at the expense of the owner. The extent to which regulation may reasonably go varies with different kinds of business. The regulation of rates to avoid monopoly is one thing. The regulation of wages is another. A business may be of such character that only the first is permissible, while another may involve such a possible danger of monopoly on the one hand, and such disaster from stoppage on the other, that both come within the public concern and power of regulation.

If, as, in effect, contended by counsel for the State, the common callings are clothed with a public interest by a mere legislative declaration, which necessarily authorizes full and comprehensive regulation within legislative discretion, there must be a revolution in the relation of government to general business. This will be running the public interest argument into the ground, to use a phrase of Mr. Justice Bradley when characterizing a similarly

extreme contention. *Civil Rights Cases*, 109 U. S. 3, 24. It will be impossible to reconcile such result with the freedom of contract and of labor secured by the Fourteenth Amendment.

This brings us to the nature and purpose of the regulation under the Industrial Court Act. The avowed object is continuity of food, clothing and fuel supply. By § 6 reasonable continuity and efficiency of the industries specified are declared to be necessary for the public peace, health and general welfare, and all are forbidden to hinder, limit or suspend them. Section 7 gives the Industrial Court power, in case of controversy between employers and workers which may endanger the continuity or efficiency of service, to bring the employer and employees before it and, after hearing and investigation, to fix the terms and conditions between them. The employer is bound by this act to pay the wages fixed and, while the worker is not required to work, at the wages fixed, he is forbidden, on penalty of fine or imprisonment, to strike against them, and thus is compelled to give up that means of putting himself on an equality with his employer which action in concert with his fellows gives him.

There is no authority of this Court to sustain such exercise of power in respect to those kinds of business affected with a public interest by a change *in pais*, first fully recognized by this Court in *Munn* v. *Illinois*, *supra*, where it said (p. 126):

" Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, the extent of the interest he has thus created. *He may withdraw his grant by discon-*

tinuing the use; but so long as he maintains the use, he must submit to the control."

These words refute the view that public regulation in such cases can secure continuity of a business against the owner. The theory is that of revocable grant only. *Weems Steamboat Co.* v. *People's Steamboat Co.*, 214 U. S. 345. If that be so with the owner and employer, *a fortiori* must it be so with the employee. In involves a more drastic exercise of control to impose limitations of continuity growing out of the public character of the business upon the employee than upon the employer; and without saying that such limitations upon both may not be sometimes justified, it must be where the obligation to the public of continuous service is direct, clear and mandatory and arises as a contractual condition express or implied of entering the business either as owner or worker. It can only arise when investment by the owner and entering the employment by the worker create a conventional relation to the public somewhat equivalent to the appointment of officers and the enlistment of soldiers and sailors in military service.

We are considering the validity of the act as compelling the employer to pay the adjudged wages, and as forbidding the employees to combine against working and receiving them. The penalties of the act are directed against effort of either side to interfere with the settlement by arbitration. Without this joint compulsion, the whole theory and purpose of the act would fail. The State can not be heard to say, therefore, that upon complaint of the employer, the effect upon the employee should not be a factor in our judgment.

Justification for such regulation is said to be found in *Wilson* v. *New*, 243 U. S. 332. It was there held that in a nation-wide dispute over wages between railroad companies and their train operatives, with a general strike, commercial paralysis and grave loss and suffering over-

hanging the country, Congress had power to prescribe wages not confiscatory, but obligatory on both for a reasonable time to enable them to agree. The Court said that the business of common carriers by rail was in one aspect a public business because of the interest of society in its continued operation and rightful conduct and that this gave rise to a public right of regulation to the full extent necessary to secure and protect it; that viewed as an act fixing wages it was an essential regulation for protection of public right, that it did not invade the private right of the carriers because their property and business were subject to the power of government to insure fit relief by appropriate means and it did not invade private rights of employees since their right to demand wages and to leave the employment individually or in concert was subject to limitation by Congress because in a public business which Congress might regulate under the commerce power.

It is urged that, under this act, the exercise of the power of compulsory arbitration rests upon the existence of a temporary emergency as in *Wilson* v. *New*. If that is a real factor here as in *Wilson* v. *New*, and in *Block* v. *Hirsh*, 256 U. S. 135, 157 (see *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393), it is enough to say that the great temporary public exigencies recognized by all and declared by Congress, were very different from that upon which the control under this act is asserted. Here it is said to be the danger that a strike in one establishment may spread to all the other similar establishments of the State and country and thence to all the national sources of food supply so as to produce a shortage. Whether such danger exists has not been determined by the legislature but is determined under the law by a subordinate agency and on its findings and prophecy, owners and employers are to be deprived of freedom of contract and workers of a most important element of their freedom of labor.

The small extent of the injury to the food supply of Kansas to be inflicted by a strike and suspension of this packing company's plant is shown in the language of the Kansas Supreme Court in this case (*Court of Industrial Relations* v. *Packing Co.*, 111 Kans. 501):

"The defendant's plant is a small one, and it may be admitted that, if it should cease to operate, the effect on the supply of meat and food in this State would not greatly inconvenience the people of Kansas; yet the plant manufactures food products and supplies meat to a part of the people of this State, and, if it should cease to operate, that source of supply would be cut off."

The Supreme Court's construction of the operation and effect of the act is controlling. The language quoted shows how drastic and all-inclusive it is.

But the chief and conclusive distinction between *Wilson* v. *New* and the case before us is that already referred to. The power of a legislature to compel continuity in a business can only arise where the obligation of continued service by the owner and its employees is direct and is assumed when the business is entered upon. A common carrier which accepts a railroad franchise is not free to withdraw the use of that which it has granted to the public. It is true that if operation is impossible without continuous loss, *Brooks-Scanlon Co.* v. *Railroad Commission*, 251 U. S. 396; *Bullock* v. *Railroad Commission*, 254 U. S. 513, it may give up its franchise and enterprise, but short of this, it must continue. Not so the owner when by mere changed conditions his business becomes clothed with a public interest. He may stop at will whether the business be losing or profitable.

The minutely detailed government supervision, including that of their relations to their employees, to which the railroads of the country have been gradually subjected by Congress through its power over interstate commerce, furnishes no precedent for regulation of the business of

the plaintiff in error whose classification as public is at the best doubtful. It is not too much to say that the ruling in *Wilson* v. *New* went to the border line, although it concerned an interstate common carrier in the presence of a nation-wide emergency and the possibility of great disaster. Certainly there is nothing to justify extending the drastic regulation sustained in that exceptional case to the one before us.

We think the Industrial Court Act, in so far as it permits the fixing of wages in plaintiff in error's packing house, is in conflict with the Fourteenth Amendment and deprives it of its property and liberty of contract without due process of law.

The judgment of the court below must be

Reversed.

KENTUCKY FINANCE CORPORATION v. PARA-